99TH CONGRESS
2d Session

SENATE

REPORT
99-302

FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

MAY 16, 1986.—Ordered to be printed

Filed, under authority of the order of the Senate of MAY 15 (legislative day, MAY 12), 1986

Mr. ROTH, from the Committee of Conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2672]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2672), to redesignate the New York International and Bulk Mail Center in Jersey City, New Jersey, as the "New Jersey International and Bulk Mail Center", and to honor the memory of a former postal employee by dedicating a portion of a street at the New York International and Bulk Mail Center in Jersey City, New Jersey, as "Michael McDermott Place", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 1 and 2, and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 3 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

TITLE I—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

SEC. 100. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Employees' Retirement System Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TABLE OF CONTENTS

TITLE I—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Sec. 100. Short title; table of contents.
Sec. 100A. Purposes.
Sec. 101. Establishment.

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TITLE II—OTHER AMENDMENTS TO TITLE 5 OF THE UNITED STATES CODE

Sec. 201. Treatment under Civil Service Retirement System of certain individuals excluded from Federal Employees' Retirement System.
Sec. 202. Non-applicability of Civil Service Retirement System to individuals under Federal Employees' Retirement System.
Sec. 203. Pay for the Executive Director of the Federal Retirement Thrift Investment Board.
Sec. 204. Alternative forms of annuities.
Sec. 205. Retirement counseling.
Sec. 206. Participation by certain employees and Members only in the Thrift Savings Plan.
Sec. 207. Miscellaneous amendments.

TITLE III—OTHER PROVISIONS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM AND THE CIVIL SERVICE RETIREMENT SYSTEM

Sec. 301. Elections.
Sec. 302. Effect of an election under section 301 to become subject to the Federal Employees' Retirement System.
Sec. 303. Provisions relating to an election to become subject to chapter 83 subject to certain offsets relating to Social Security.
Sec. 304. Amendments relating to Social Security.
Sec. 305. Extension of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983; refund of excess contributions.
Sec. 306. Applicability to the United States Postal Service.
Sec. 307. Use of "normal-cost percentage".
Sec. 308. Retirement study.
Sec. 309. Repeal of automatic transfer provision.
Sec. 310. Disclosure of return information.
Sec. 311. Initial appointments to the Federal Retirement Thrift Investment Board.
Sec. 312. Plan for delayed contributions to the Thrift Savings Fund.

TITLE IV—FOREIGN SERVICE RETIREMENT

Sec. 401. Short title; references to Foreign Service Act of 1980.
Sec. 402. Redesignation of certain provisions of the Foreign Service Act of 1980.
Sec. 403. Definition of court.
Sec. 404. Creditable service for purposes of subchapters I and II.
Sec. 405. Contributions to the Foreign Service Retirement and Disability System.
Sec. 406. Offset of annuity by the amount of Social Security benefits.
Sec. 407. 18-month period to elect survivor annuity.
Sec. 408. Alternate forms of annuities.
Sec. 409. Treatment of certain recall service.
Sec. 410. Reemployment.
Sec. 411. Comparability between the Federal Employees' Retirement System and the Foreign Service Pension System.
Sec. 412. Moderation of remarriage penalty.
Sec. 413. Lump-sum payments.
Sec. 414. Exclusion of participants in Foreign Service Pension System from Foreign Service Retirement and Disability System.
Sec. 415. Foreign Service Pension System.
Sec. 416. Table of contents.
Sec. 417. Effective date.

TITLE V—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND RELATED MATTERS

Sec. 501. References.
Sec. 502. Contributions to the Central Intelligence Agency Retirement and Disability System.
Sec. 503. Offset of annuity by the amount of Social Security benefits.
Sec. 504. Thrift savings fund participation by participants in the Central Intelligence Agency Retirement and Disability System.
Sec. 505. Alternative forms of annuities.
Sec. 506. Participation in the Federal Employees' Retirement System.
Sec. 507. Special retirement accrual for other intelligence personnel.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Annuities for survivors of District of Columbia judges.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATES

Sec. 701. Authorization of appropriations for certain expenses of the Federal Retirement Thrift Investment Management System.
Sec. 702. Effective dates.

SEC. 100A. PURPOSES.

The purposes of this Act are—

(1) to establish a Federal employees' retirement plan which is coordinated with title II of the Social Security Act;

(2) to ensure a fully funded and financially sound retirement benefits plan for Federal employees;

(3) to enhance portability of retirement assets earned as an employee of the Federal Government;

(4) to provide options for Federal employees with respect to retirement planning;

(5) to assist in building a quality career work force in the Federal Government;

(6) to encourage Federal employees to increase personal savings for retirement; and

(7) to extend financial protection from disability to additional Federal employees and to increase such protection for eligible Federal employees.

SEC. 101. ESTABLISHMENT.

(a) IN GENERAL.—Title 5, United States Code, is amended by inserting after chapter 83 the following new chapter:

"CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"8401. Definitions.
"8402. Federal Employees' Retirement System; exclusions.
"8403. Relationship to the Social Security Act.

"SUBCHAPTER II—BASIC ANNUITY

"8410. Eligibility for annuity.
"8411. Creditable service.
"8412. Immediate retirement.
"8413. Deferred retirement.
"8414. Early retirement.
"8415. Computation of basic annuity.
"8416. Survivor reduction for a current spouse.
"8417. Survivor reduction for a former spouse.
"8418. Survivor elections; deposit; offsets.
"8419. Survivor reductions; computation.
"8420. Insurable interest reductions.
"8420a. Alternative forms of annuities.
"8421. Annuity supplement.
"8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement.
"8422. Deductions from pay; contributions for military service.
"8423. Government contributions.
"8424. Lump-sum benefits; designation of beneficiary; order of precedence.
"8425. Mandatory separation.

"SUBCHAPTER III—THRIFT SAVINGS PLAN

"8431. Definition.
"8432. Contributions.
"8433. Benefits and election of benefits.
"8434. Annuities: methods of payment; election; purchase.
"8435. Protections for spouses and former spouses.
"8436. Administrative provisions.
"8437. Thrift Savings Fund.
"8438. Investment of Thrift Savings Fund.
"8439. Accounting and information.
"8440. Tax treatment of the Thrift Savings Fund.

"SUBCHAPTER IV—SURVIVOR ANNUITIES

"8441. Definitions.
"8442. Rights of a widow or widower.
"8443. Rights of a child.
"8444. Rights of a named individual with an insurable interest.
"8445. Rights of a former spouse.

"SUBCHAPTER V—DISABILITY BENEFITS

"8451. Disability retirement.
"8452. Computation of disability annuity.
"8453. Application.
"8454. Medical examination.
"8455. Recovery; restoration of earning capacity.
"8456. Relationship to workers' compensation.
"8457. Military reserve technicians.

"SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

"8461. Authority of the Office of Personnel Management.
"8462. Cost-of-living adjustments.
"8463. Rate of benefits.
"8464. Commencement and termination of annuities of employees and Members.
"8465. Waiver, allotment, and assignment of benefits.
"8466. Application for benefits.
"8467. Court orders.
"8468. Annuities and pay on reemployment.
"8469. Withholding of State income taxes.
"8470. Exemption from legal process; recovery of payments.

"SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

"8471. Definitions.
"8472. Federal Retirement Thrift Investment Board.
"8473. Employee Thrift Advisory Council.
"8474. Executive Director.
"8475. Investment policies.
"8476. Administrative provisions.
"8477. Fiduciary responsibilities; liability and penalties.
"8478. Bonding.
"8479. Exculpatory provisions; insurance.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 8401. Definitions

"For the purpose of this chapter—

"(1) the term 'account' means an account established and maintained under section 8439(a) of this title;

"(2) the term 'annuitant' means a former employee or Member who, on the basis of that individual's service, meets all requirements for title to an annuity under subchapter II or V of this chapter and files claim therefor;

"(3) the term 'average pay' means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of service or, in the case of an annuity under this chapter based on service of less than 3 years, over the total service, with each rate weighted by the period it was in effect;

"(4) except as provided in subchapter III of this chapter, the term 'basic pay' has the meaning given such term by section 8331(3);

"(5) the term 'Board' means the Federal Retirement Thrift Investment Board established by section 8472(a) of this title;

"(6) the term 'Civil Service Retirement and Disability Fund' or 'Fund' means the Civil Service Retirement and Disability Fund under section 8348;

"(7) the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

"(8) the term 'Director' means the Director of the Office of Personnel Management;

"(9) the term 'dynamic assumptions' means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

"(A) investment yields;

"(B) increases in rates of basic pay; and

"(C) rates of price inflation;

"(10) the term 'earnings', when used with respect to the Thrift Savings Fund, means the amount of the gain realized or yield received from the investment of sums in such Fund;

"(11) the term 'employee' means—

"(A) an individual referred to in subparagraph (A), (E), (F), (H), (I), or (J) of section 8331(1) of this title; and

"(B) a Congressional employee as defined in section 2107 of this title, including a temporary Congressional employee and an employee of the Congressional Budget Office;

any of whose civilian service after December 31, 1983, is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, except that such term does not include—

"(i) any individual referred to in—

"(I) clause (i), (v), (vi), or (ix) of paragraph (1) of section 8331;

"(II) clause (ii) of such paragraph (other than an employee of the United States Park Police, or the United States Secret Service, any of whose civilian service after December 31, 1983, is such employment); or

"(III) the undesignated material after the last clause of such paragraph; or

"(ii) any individual excluded under section 8402(c) of this title;

"(12) the term 'former spouse' means a former spouse of an individual—

"(A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and

"(B) if the former spouse was married to such individual for at least 9 months;

"(13) the term 'Executive Director' means the Executive Director appointed under section 8474(a);

"(14) the term 'firefighter' means—

"(A) an employee, the duties of whose position—

"(i) are primarily to perform work directly connected with the control and extinguishment of fires; and

"(ii) are sufficiently rigorous that employment opportunities are required to be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency; and

"(B) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) for at least 10 years;

"(15) the term 'Government' means the Federal Government and Gallaudet College;

"(16) the term 'Indian court' has the meaning given such term by section 8331(24);

"(17) the term 'law enforcement officer' means—

"(A) an employee, the duties of whose position—

"(i) are primarily—

"(I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or

"(II) the protection of officials of the United States against threats to personal safety; and

"(ii) are sufficiently rigorous that employment opportunities are required to be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency;

"(B) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) for at least 10 years; and

"(C) an employee—

"(i) of the Bureau of Prisons or Federal Prison Industries, Incorporated;

"(ii) of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated; or

"(iii) in the field service at Army or Navy disciplinary barracks or at any other confinement and rehabilitation facility operated by any of the armed forces;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10) require frequent

direct contact with these individuals in their detention and are sufficiently rigorous that employment opportunities are required to be limited to young and physically vigorous individuals, as determined by the head of the employing agency;

"(18) the term 'loss', when used with respect to the Thrift Savings Fund, means the amount of the loss resulting from the investment of sums in such Fund;

"(19) the term 'lump-sum credit' means the unrefunded amount consisting of—

"(A) retirement deductions made from the basic pay of an employee or Member under section 8422(a) of this title (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

"(B) amounts deposited by an employee or Member under section 8422(e); and

"(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e), as determined by the Secretary (compounded annually);

but does not include interest—

"(i) if the service covered thereby aggregates 1 year or less; or

"(ii) for a fractional part of a month in the total service;

"(20) the term 'Member' has the same meaning as provided in section 2106, except that such term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in the Federal Employees' Retirement System;

"(21) the term 'net earnings' means the excess of earnings over losses;

"(22) the term 'net losses' means the excess of losses over earnings;

"(23) the term 'normal-cost percentage' means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

"(24) the term 'Office' means the Office of Personnel Management;

"(25) the term 'price index' has the same meaning as provided in section 8331(15);

"(26) the term 'service' means service which is creditable under section 8411;

"(27) the term 'supplemental liability' means the estimated excess of—

"(A) the actuarial present value of all future benefits payable from the Fund under this chapter based on the service of current or former employees or Members, over

"(B) the sum of—

"(i) the actuarial present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this chapter pursuant to section 8422;

"(ii) the actuarial present value of the future contributions to be made pursuant to section 8423(a) with respect to employees and Members currently subject to this chapter;

"(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

"(I) to the System, or

"(II) to contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of an individual who became subject to the System; and

"(iv) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles;

"(28) the term 'survivor' means an individual entitled to an annuity under subchapter IV of this chapter;

"(29) the term 'System' means the Federal Employees' Retirement System described in section 8402(a);

"(30) the term 'military reserve technician' means a member of one of the reserve components of the armed forces specified in section 261(a) of title 10 who—

"(A) is assigned to a civilian position as a technician in the administration and training of such reserve components or in the maintenance and repair of supplies issued to such reserve components; and

"(B) as a condition of employment in such position, is required to be a member of one of such reserve components serving in a specified military grade; and

"(31) the term 'military service' means honorable active service—

"(A) in the armed forces;

"(B) in the commissioned corps of the Public Health Service after June 30, 1960; or

"(C) in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States.

"§ 8402. Federal Employees' Retirement System; exclusions

"(a) The provisions of this chapter comprise the Federal Employees' Retirement System.

"(b) The provisions of this chapter shall not apply with respect to—

"(1) any individual who has performed service of a type described in subparagraph (C), (D), (E), or (F) of section 210(a)(5) of the Social Security Act continuously since December 31, 1983 (determined in accordance with the provisions of section

210(a)(5)(B) of the Social Security Act, relating to continuity of employment); or

"(2)(A) any employee or Member who has separated from the service after—

"(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and

"(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or

"(B) any employee having at least 5 years of civilian service performed before January 1, 1987, creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter);

except to the extent provided for under title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this chapter.

"(c)(1) The Office may exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

"(2) The Architect of the Capitol may exclude from the operation of this chapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

"(3) The Librarian of Congress may exclude from the operation of this chapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

"(4) The Director or Acting Director of the Botanic Garden may exclude from the operation of this chapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration.

"§ 8403. Relationship to the Social Security Act

"Except as otherwise provided in this chapter, the benefits payable under the System are in addition to the benefits payable under the Social Security Act.

"SUBCHAPTER II—BASIC ANNUITY

"§ 8410. Eligibility for annuity

"Notwithstanding any other provision of this chapter, an employee or Member must complete at least 5 years of civilian service cred-

itable under section 8411 in order to be eligible for an annuity under this subchapter.

"§ 8411. Creditable service

"(a)(1) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

"(2) Credit may not be allowed for a period of separation from the service in excess of 3 calendar days.

"(b) For the purpose of this chapter, creditable service of an employee or Member includes—

"(1) employment as an employee, and any service as a Member (including the period from the date of the beginning of the term for which elected or appointed to the date of taking office as a Member), after December 31, 1986;

"(2) service with respect to which deductions and withholdings under section 204(a)(1) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made;

"(3) except as provided in subsection (f), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter); and

"(4) a period of service (other than any service under any of the preceding provisions of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8 of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)).

"(c)(1) Except as provided in paragraph (2) or (3), an employee or Member shall be allowed credit for—

"(A) each period of military service performed before January 1, 1957; and

"(B) each period of military service performed after December 31, 1956, and before the separation on which title to annuity is based, if a deposit (including interest, if any) is made with respect to such period in accordance with section 8422(e).

"(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

"(A) based on a service-connected disability—

"(i) incurred in combat with an enemy of the United States; or

"(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 301 of title 38; or

"(B) under chapter 67 of title 10.

"(3) An employee or Member who has made a deposit under section 8334(j) (or a similar prior provision of law) with respect to a period of military service, and who has not taken a refund of such deposit—

"(A) shall be allowed credit for such service without regard to the deposit requirement under paragraph (1)(B); and

"(B) shall be entitled, upon filing appropriate application therefor with the Office, to a refund equal to the difference between—

"(i) the amount deposited with respect to such period under such section 8334(j) (or prior provision), excluding interest; and

"(ii) the amount which would otherwise have been required with respect to such period under paragraph (1)(B).

"(d) Credit under this chapter shall be allowed for leaves of absence without pay granted an employee while performing military service, or while receiving benefits under subchapter I of chapter 81. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been on leave of absence without pay for that part of the period in which that individual was receiving benefits under subchapter I of chapter 81. Credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

"(e) Credit shall be allowed for periods of approved leave without pay granted an employee to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11)), subject to the employee arranging to pay, through the employee's employing agency, within 60 days after commencement of such leave without pay, amounts equal to the retirement deductions and agency contributions which would be applicable under sections 8422(a) and 8423(a), respectively, if the employee were in pay status. If the election and all payments provided by this subsection are not made, the employee may not receive credit for the periods of leave without pay, notwithstanding the third sentence of subsection (d).

"(f)(1) An employee or Member who has received a refund of retirement deductions under subchapter III of chapter 83 with respect to any service described in subsection (b)(3) may not be allowed credit for such service under this chapter unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest.

"(2) An employee or Member may not be allowed credit under this chapter for any service described in subsection (b)(3) for which retirement deductions under subchapter III of chapter 83 have not been made, unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest.

"(3) Interest under paragraph (1) or (2) shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office.

"(4) For the purpose of survivor annuities, deposits authorized by the preceding provisions of this subsection may also be made by a survivor of an employee or Member.

"§ 8412. Immediate retirement

"(a) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 30 years of service is entitled to an annuity.

"(b) An employee or Member who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

"(c) An employee or Member who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

"(d) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

"(1) after completing 25 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 25 years, or

"(2) after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years,

is entitled to an annuity.

"(e) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

"(1) after completing 25 years of service as an air traffic controller, or

"(2) after becoming 50 years of age and completing 20 years of service as an air traffic controller,

is entitled to an annuity.

"(f) A Member who is separated from the service, except by resignation or expulsion—

"(1) after completing 25 years of service, or

"(2) after becoming 50 years of age and completing 20 years of service,

is entitled to an annuity.

"(g) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 10 years of service is entitled to an annuity. This subsection shall not apply to an employee or Member who is entitled to an annuity under any other provision of this section.

"(h)(1) The applicable minimum retirement age under this subsection is—

"(A) for an individual whose date of birth is before January 1, 1948, 55 years of age;

"(B) for an individual whose date of birth is after December 31, 1947, and before January 1, 1953, 55 years of age plus the number of months in the age increase factor determined under paragraph (2)(A);

"(C) for an individual whose date of birth is after December 31, 1952, and before January 1, 1965, 56 years of age;

"(D) for an individual whose date of birth is after December 31, 1964, and before January 1, 1970, 56 years of age plus the number of months in the age increase factor determined under paragraph (2)(B); and

"(E) for an individual whose date of birth is after December 31, 1969, 57 years of age.

"(2)(A) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1948 through 1952, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1948 and ending with December of the year in which the date of birth occurs.

"(B) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1965 through 1969, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1965 and ending with December of the year in which the date of birth occurs.

"§ 8413. Deferred retirement

"(a) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 5 years of service is entitled to an annuity beginning at the age of 62 years.

"(b)(1) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 10 years of service is entitled to an annuity beginning on the date designated by the employee or Member in a written election under this subsection. The date designated under this subsection may not precede the date on which the employee or Member attains the applicable minimum retirement age under section 8412(h) and must precede the date on which the employee or Member becomes 62 years of age.

"(2) The election of an annuity under this subsection shall not be effective unless—

"(A) it is made at such time and in such manner as the Office shall by regulation prescribe; and

"(B) the employee or Member will not otherwise be eligible to receive an annuity within 31 days after filing the election.

"(3) The election of an annuity under this subsection extinguishes the right of the employee or Member to receive any other annuity based on the service on which the annuity under this subsection is based.

"§ 8414. Early retirement

"(a)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

"(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for less than fully successful executive performance

after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

"(b)(1) Except as provided in paragraphs (2) and (3), an employee who—

"(A) is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency; or

"(B) while serving in a geographic area designated by the Director, is separated from the service voluntarily during a period in which (as determined by the Director)—

"(i) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

"(ii) a significant percentage of the total number of employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);

after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

"(2) An employee under paragraph (1) who is separated as described in subparagraph (A) of such paragraph is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, and the offered position is not lower than 2 grades (or pay levels) below the employee's grade (or pay level) and is within the employee's commuting area.

"(3) Paragraph (1) shall not apply to an employee entitled to an annuity under subsection (d) or (e) of section 8412.

"(c) A military reserve technician who is separated from technician service, after becoming 50 years of age and completing 25 years of service, by reason of ceasing to satisfy the condition described in section 8401(30)(B) is entitled to an annuity.

"§ 8415. Computation of basic annuity

"(a) Except as otherwise provided in this section, the annuity of an employee retiring under this subchapter is 1 percent of that individual's average pay multiplied by such individual's total service.

"(b) The annuity of a Member, or former Member with title to a Member annuity, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Member or Congressional employee, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 $^{7}/_{10}$ percent of the individual's average pay by the years of such service.

"(c) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Congressional employee or Member, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 $^{7}/_{10}$ percent of the individual's average pay by the years of such service.

"(d) The annuity of an employee retiring under subsection (d) or (e) of section 8412 or under subsection (a) or (b) of section 8425 is—

"(1) 1 7/10 percent of that individual's average pay multiplied by so much of such individual's total service as does not exceed 20 years; plus

"(2) 1 percent of that individual's average pay multiplied by so much of such individual's total service as exceeds 20 years.

"(e)(1) In computing an annuity under this subchapter for an employee whose service includes service performed on a part-time basis—

"(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

"(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating the employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

"(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

"(f)(1) The annuity of an employee or Member retiring under section 8412(g) or 8413(b) is computed in accordance with applicable provisions of this section, except that the annuity shall be reduced by five-twelfths of 1 percent for each full month by which the commencement date of the annuity precedes the sixty-second anniversary of the birth of the employee or Member.

"(2)(A) Paragraph (1) does not apply in the case of an employee or Member retiring under section 8413(b) if the employee or Member would satisfy the age and service requirements for title to an annuity under section 8412(a), (b), (d)(2), (e)(2), or (f)(2), determined as if the employee or Member had, as of the date of separation, attained the age specified in subparagraph (B).

"(B) A determination under subparagraph (A) shall be based on how old the employee or Member will be as of the date on which the annuity under section 8413(b) is to commence.

"(g)(1) In applying subsection (a) with respect to an employee under paragraph (2), the percentage applied under such subsection shall be 1.1 percent, rather than 1 percent.

"(2) This subsection applies in the case of an employee who—

"(A) retires entitled to an annuity under section 8412; and

"(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service;

but does not apply in the case of a Congressional employee, military reserve technician, law enforcement officer, firefighter, or air traffic controller.

"§ 8416. Survivor reduction for a current spouse

"(a)(1) If an employee or Member is married at the time of retiring under this chapter, the reduction described in section 8419(a) shall be made unless the employee or Member and the spouse jointly

waive, by written election, any right which the spouse may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

"(2) Notwithstanding paragraph (1), an employee or Member who is married at the time of retiring under this chapter may waive the annuity for a surviving spouse without the spouse's consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)--

"(A) that the spouse's whereabouts cannot be determined; or

"(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

"(3) Except as provided in subsection (d), a waiver made under this subsection shall be irrevocable.

"(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse in the event such spouse survives the employee or Member.

"(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

"(3) An election to provide a survivor annuity to an individual under this subsection—

"(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

"(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

"(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

"(A) the employee or Member was married to such individual at the time of retirement; and

"(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

"(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or

Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

"(2) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage. Any such election to provide a survivor annuity for an individual—

"(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

"(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

"(d)(1) An employee or Member—

"(A) who is married on the date of retiring under this chapter, and

"(B) with respect to whose spouse a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse.

"(2)(A) An election under this subsection shall not be effective unless the amount described in subparagraph (B) is deposited into the Fund before the expiration of the 18-month period referred to in paragraph (1).

"(B) The amount to be deposited under this subparagraph is equal to the sum of—

"(i) the difference (for the period between the date on which the annuity of the former employee or Member commences and the date on which reductions pursuant to the election under this subsection commence) between the amount paid to the former employee or Member from the Fund under this chapter and the amount which would have been paid if such election had been made at the time of retirement; and

"(ii) the costs associated with providing for the election under this subsection.

The amount to be deposited under clause (i) shall include interest, computed at the rate of 6 percent a year.

"(3) An annuity which is reduced pursuant to an election by a former employee or Member under this subsection shall be reduced by the same percentage as was in effect under section 8419 as of the date of the employee's or Member's retirement.

"(4) Rights and obligations under this chapter resulting from an election under this subsection shall be the same as the rights and obligations which would have resulted had the election been made at the time of retirement.

"(5) The Office shall inform each employee and Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable in making any such election.

"§ 8417. Survivor reduction for a former spouse

"(a) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8445, the reduction described in section 8419(a) shall be made.

"(b)(1) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, a reduction in the annuity of the employee or Member under section 8419(a) in order to provide a survivor annuity for such former spouse under section 8445.

"(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved.

"(3) An election under this subsection—

"(A) shall not be effective to the extent that it—

"(i) conflicts with—

"(I) any court order or decree referred to in section 8445(a) which was issued before the date of such election; or

"(II) any agreement referred to in such section 8445(a) which was entered into before such date; or

"(ii) would cause the total of survivor annuities payable under sections 8442 and 8445, respectively, based on the service of the employee or Member to exceed the amount which would be payable to a widow or widower of such employee or Member under such section 8442 (determined without regard to any reduction to provide for an annuity under such section 8445); and

"(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall by regulation provide that subparagraph (B) may be waived for either of the reasons set forth in section 8416(a)(2).

"§ 8418. Survivor elections; deposit; offsets

"(a)(1) An individual who makes an election under subsection (b) or (c) of section 8416 or section 8417(b) which is required to be made within 2 years after the date of a prescribed event shall deposit into the Fund, before the expiration of the 2-year period involved, an amount determined by the Office (as nearly as may be administratively feasible) to reflect the amount by which the annuity of such individual would have been reduced if the election had been in effect since the date of retirement (or, if later, and in the case of an election under such section 8416(b), since the date the previous reduction in the annuity of such individual was terminated under paragraph (1) or (2) of section 8419(b)), plus interest.

"(2) Interest under paragraph (1) shall be computed at the rate of 6 percent a year.

"(b) If the electing individual does not make the deposit required under subsection (a), the Office shall collect such amount by offset against such individual's annuity, up to a maximum of 25 percent of the net annuity otherwise payable, and the individual is deemed to consent to such offset.

"(c) Subsections (a) and (b) shall not apply if—

"(1) the employee or Member makes an election under section 8416(b) or (c) after having made an election under section 8420; and

"(2) the election under such section 8420 becomes void under subsection (b)(3) or (c)(2) of such section 8416.

"(d) The Office shall prescribe regulations under which the survivor of an employee or Member may make a deposit under this section.

"§ 8419. Survivor reductions; computation

"(a)(1) Except as provided in paragraph (2), the annuity of an annuitant computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable), shall be reduced by 10 percent if a survivor annuity, or a combination of survivor annuities, under section 8442 or 8445 (or both) are to be provided for.

"(2)(A) If no survivor annuity under section 8442 is to be provided for, but one or more survivor annuities under section 8445 involving a total of less than the entirety of the amount referred to in subsection (b)(2) of such section are to be provided for, the annuity of the annuitant involved (as computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable)), shall be reduced by an appropriate percentage determined under subparagraph (B).

"(B) The Office shall prescribe regulations under which an appropriate reduction under this paragraph, not to exceed a total of 10 percent, shall be made.

"(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

"(A) after the death of the spouse; or

"(B) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8445.

"(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has one or more of the following:

"(A) another former spouse who is entitled to a survivor annuity under section 8445;

"(B) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not waived under section 8416(a) (or, if waived, with respect to whom an election under section 8416(d) has been made); or

"(C) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.

"§ 8420. Insurable interest reductions

"(a)(1) At the time of retiring under section 8412, 8413, or 8414, an employee or Member who is found to be in good health by the Office may elect to have such employee's or Member's annuity (as computed under section 8415) reduced under paragraph (2) in order to provide an annuity under section 8444 for an individual having an insurable interest in the employee or Member. Such individual shall be designated by the employee or Member in writing.

"(2) The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member, except that the total reduction may not exceed 40 percent.

"(3) An annuity which is reduced under this subsection shall, effective the first day of the month following the death of the individual named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

"(b)(1) In the case of a married employee or Member, an election under this section on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with section 8416(a).

"(2) Paragraph (1) does not apply in the case of an employee or Member if such employee or Member has a former spouse who would become entitled to an annuity under section 8445 as a survivor of such employee or Member.

"§ 8420a. Alternative forms of annuities

"(a) The Office shall prescribe regulations under which an employee or Member may, at the time of retiring under this subchapter, elect annuity benefits under this section instead of any other benefits under this subchapter, and any benefits under subchapter IV of this chapter, based on the service of the employee or Member.

"(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

"(1) an alternative which provides for—

"(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

"(B) payment of an annuity to the employee or Member for life; and

"(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

"(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

"(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

"(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the sum of—

"(1) the present value of the annuity which would otherwise be provided under this subchapter, as computed under section 8415; and

"(2) the present value of the annuity supplement which would otherwise be provided (if any) under section 8421.

"(d) An employee or Member who, at the time of retiring under this subchapter—

"(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8416(a); or

"(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8445 or 8467 (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

"(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8416(d), subject to the deposit requirement thereunder.

"§ 8421. Annuity supplement

"(a)(1) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under subsection (a), (b), (d), or (e) of section 8412, or under section 8414(c), also be entitled to an annuity supplement under this section.

"(2) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under section 8412(f), or under subsection (a) or (b) of section 8414, also be entitled to an annuity supplement under this section if such individual is at least the applicable minimum retirement age under section 8412(h).

"(3)(A) An individual whose entitlement to an annuity under section 8412 or 8414 does not commence before age 62 is not entitled to an annuity supplement under this section.

"(B) An individual entitled to an annuity supplement under this section ceases to be so entitled after the last day of the month preceding the first month for which such individual would, on proper application, be entitled to old-age insurance benefits under title II of the Social Security Act, but not later than the last day of the month in which such individual attains age 62.

"(b)(1) The amount of the annuity supplement of an annuitant under this section for any month shall be equal to the product of—

"(A) an amount determined under paragraph (2), multiplied by

"(B) a fraction, as described in paragraph (3).

"(2) The amount under this paragraph for an annuitant is an amount equal to the old-age insurance benefit which would be payable to such annuitant under title II of the Social Security Act (without regard to sections 203, 215(a)(7), and 215(d)(5) of such Act) upon attaining age 62 and filing application therefor, determined as if the annuitant had attained such age and filed application therefor, and were a fully insured individual (as defined in section 214(a) of such Act), on January 1 of the year in which such annuitant's

entitlement to any payment under this section commences, except that the reduction of such old-age insurance benefit under section 202(q) of such Act shall be the maximum applicable for an individual born in the same year as the annuitant. In computing the primary insurance amount under section 215 of such Act for purposes of this paragraph, the number of elapsed years (referred to in section 215(b)(2)(B)(iii) of such Act and used to compute the number of benefit computation years) shall not include years beginning with the year in which such annuitant's entitlement to any payment under this section commences, and—

"(A) only basic pay for service performed (if any) shall be taken into account in computing the total wages and self-employment income of the annuitant for a benefit computation year;

"(B) for a benefit computation year which commences after the date of the separation with respect to which entitlement to the annuitant's annuity under this subchapter is based and before the date as of which such annuitant is treated, under the preceding sentence, to have attained age 62, the total wages and self-employment income of such annuitant for such year shall be deemed to be zero; and

"(C) for a benefit computation year after age 21 which precedes the separation referred to in subparagraph (B), and during which the individual did not perform a full year of service, the total wages and self-employment income of such annuitant for such year shall be deemed to have been an amount equal to the product of—

"(i) the average total wages of all workers for that year, multiplied by

"(ii) a fraction—

"(I) the numerator of which is the total basic pay of the individual for service performed in the first year thereafter in which such individual performed a full year of service; and

"(II) the denominator of which is the average total wages of all workers for the year referred to in subclause (I).

"(3) The fraction under this paragraph for any annuitant is a fraction—

"(A) the numerator of which is the annuitant's total years of service (rounding a fraction to the nearest whole number, with ½ being rounded to the next higher number), not to exceed the number under subparagraph (B); and

"(B) the denominator of which is 40.

"(4) For the purpose of this subsection—

"(A) the term 'benefit computation year' has the meaning provided in section 215(b)(2)(B)(i) of the Social Security Act;

"(B) the term 'average total wages of all workers', for a year, means the average of the total wages, as defined and computed under section 215(b)(3)(A)(ii)(I) of the Social Security Act for such year; and

"(C) the term 'service' does not include military service.

"(c) An amount under this section shall, for purposes of section 8467, be treated in the same way as an amount computed under section 8415.

"§ 8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement

"(a) The amount of the annuity supplement to which an individual is entitled under section 8421 for any month (determined without regard to subsection (c) of such section) shall be reduced by the amount of any excess earnings of such individual which are required to be charged to such supplement for such month, as determined under subsection (b).

"(b) The amount of an individual's excess earnings shall be charged to months as follows:

"(1)(A) There shall be charged to each month of a year under subsection (a) an amount equal to the individual's excess earnings (as determined under paragraph (2) with respect to such year), divided by the number of the individual's supplement entitlement months for such year (as determined under paragraph (3)).

"(B) Notwithstanding subparagraph (A), the amount charged to a month under subsection (a) may not exceed the amount of the annuity supplement to which the individual is entitled under section 8421 for such month (determined without regard to subsection (c) of such section).

"(2) The excess earnings based on which reductions under subsection (a) shall be made with respect to an individual in a year—

"(A) shall be equal to 50 percent of so much of such individual's earnings for the immediately preceding year as exceeds the applicable exempt amount for such preceding year; but

"(B) may not exceed the total amount of the annuity supplement payments to which such individual was entitled for such preceding year under section 8421 (determined without regard to subsection (c) of such section, and without regard to this section).

"(3)(A) Subject to subparagraph (B), the number of an individual's supplement entitlement months for a year shall be 12.

"(B) The number determined under subparagraph (A) shall be reduced so as not to include any month after which such individual ceases to be entitled to an annuity supplement by reason of section 8421(a)(3)(B), relating to cessation of entitlement upon attaining age 62.

"(4)(A) For purposes of this section, and except as provided in subparagraph (B), the 'earnings' and the 'applicable exempt amount' of an individual shall be determined in a manner consistent with applicable provisions of section 203 of the Social Security Act.

"(B) For purposes of this section—

"(i) in determining the excess earnings of any individual, only earnings attributable to periods during which such individual was entitled to an annuity supplement under section 8421 shall be considered; and

"(ii) any earnings attributable to a period before attaining the applicable retirement age under section 8412(h) shall not be considered in determining the excess earnings of an individual who retires under section 8412(d) or (e), or section 8414(c).

"(c) If, after an individual ceases to be entitled to an annuity supplement under section 8421 by reason of subsection (a)(3)(B) of such section, any portion of the individual's excess earnings remains outstanding, an amount not to exceed 25 percent of the amount otherwise payable to such individual under this chapter for each month shall be deducted from such monthly payment until the full amount of that outstanding portion has been accounted for. To the extent practicable, reductions under this subsection shall be made by a level percentage.

"(d) The Office shall prescribe regulations under which this section shall be applied in the case of a reemployed annuitant.

"§ 8422. Deductions from pay; contributions for military service

"(a)(1) The employing agency shall deduct and withhold from basic pay of each employee and Member a percentage of basic pay determined in accordance with paragraph (2).

"(2) The applicable percentage under this subsection for any pay period shall be—

"(A) in the case of an employee (other than a law enforcement officer, firefighter, air traffic controller, or Congressional employee) a percentage equal to—

"(i) 7 percent, minus

"(ii) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1954 (relating to rate of tax for old-age, survivors, and disability insurance); and

"(B) in the case of a Member, law enforcement officer, firefighter, air traffic controller, or Congressional employee, a percentage equal to—

"(i) 7½ percent, minus

"(ii) the same percentage as would apply in the case of an employee under subparagraph (A)(ii).

"(b) Each employee or Member is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter, or under subchapter IV or V of this chapter, based on the service of the employee or Member.

"(c) The amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

"(d) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

"(e)(1) Each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is

based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, an amount equal to 3 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based on estimates of such basic pay provided to the Office under paragraph (4).

"(2) Any deposit made under paragraph (1) more than two years after the later of—

"(A) January 1, 1987; or

"(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e).

"(3) Any payment received by an agency, the Secretary of the Senate, or the Clerk of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

"(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

"§ 8423. Government contributions

"(a)(1) Each employing agency having any employees or Members subject to section 8422(a) shall contribute to the Fund an amount equal to the sum of—

"(A) the product of—

"(i) the normal-cost percentage, as determined for employees (other than employees covered by subparagraph (B)), multiplied by

"(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees (under clause (i)) who are within such agency; and

"(B) the product of—

"(i) the normal-cost percentage, as determined for Members, Congressional employees, law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and employees under sections 302 and 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, multiplied by

"(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees and Members (under clause (i)) who are within such agency.

"(2) In determining any normal-cost percentage to be applied

under this subsection, amounts provided for under section 8422 shall be taken into account.

"(3) Contributions under this subsection shall be paid—

"(A) in the case of law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, firefighters, air traffic controllers, military reserve technicians, or other employees, respectively;

"(B) in the case of elected officials, from an appropriation or fund available for payment of other salaries of the same office or establishment; and

"(C) in the case of employees of the legislative branch paid by the Clerk of the House of Representatives, from the contingent fund of the House.

"(4) A contribution to the Fund under this subsection shall be deposited under such procedures as the Comptroller General of the United States may prescribe.

"(b)(1) The Office shall compute—

"(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

"(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the Postal Rate Commission) and their survivors;

as of the close of each fiscal year beginning after September 30, 1987.

"(2) The amount of any supplemental liability computed under paragraph (1)(A) or (1)(B) shall be amortized in 30 equal annual installments, with interest computed at the rate used in the most recent valuation of the System.

"(3) At the end of each fiscal year, the Office shall notify—

"(A) the Secretary of the Treasury of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(A); and

"(B) the Postmaster General of the United States of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(B).

"(4)(A) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (3)(A) for such year.

"(B) Upon receiving notification under paragraph (3)(B), the United States Postal Service shall pay the amount specified in such notification to the Fund.

"(5) For the purpose of carrying out paragraph (1) with respect to any fiscal year, the Office may—

"(A) require the Board of Actuaries of the Civil Service Retirement System to make actuarial determinations and valuations, make recommendations, and maintain records in the same manner as provided in section 8347(f); and

"(B) use the latest actuarial determinations and valuations made by such Board of Actuaries.

"(c) Under regulations prescribed by the Office, the head of an

agency may request reconsideration of any amount determined to be payable with respect to such agency under subsection (a) or (b). Any such request shall be referred to the Board of Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review the computations of the Office and may make any adjustment with respect to any such amount which the Board determines appropriate. A determination by the Board of Actuaries under this subsection shall be final.

"§ 8424. Lump-sum benefits; designation of beneficiary; order of precedence

"(a) Subject to subsection (b), an employee or Member who—

"(1)(A) is separated from the service for at least 31 consecutive days; or

"(B) is transferred to a position in which the individual is not subject to this chapter and remains in such a position for at least 31 consecutive days;

"(2) files an application with the Office for payment of the lump-sum credit;

"(3) is not reemployed in a position in which the individual is subject to this chapter at the time of filing the application; and

"(4) will not become eligible to receive an annuity within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Except as provided in section 8420a, payment of the lump-sum credit to an employee or Member voids all annuity rights under this subchapter, and subchapters IV and V of this chapter, based on the service on which the lump-sum credit is based.

"(b)(1) Payment of the lump-sum credit under subsection (a)—

"(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the application by the employee or Member; and

"(B) in any case in which there is a former spouse, shall be subject to the terms of a court decree of divorce, annulment, or legal separation issued with respect to such former spouse if—

"(i) the decree expressly relates to any portion of the lump-sum credit involved; and

"(ii) payment of the lump-sum credit would affect any right or interest of the former spouse with respect to a survivor annuity under section 8445, or to any portion of an annuity under section 8467.

"(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

"(B) Under the regulations, the Office may provide that paragraph (1)(A) may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

"(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more orders or decrees referred to in paragraph (1)(B)(i).

"(c) Under regulations prescribed by the Office, an employee or Member, or a former employee or Member, may designate one or more beneficiaries under this section.

"(d) Lump-sum benefits authorized by subsections (e) through (g) shall be paid to the individual or individuals surviving the employ-

ee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other individual:

"First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before the death of such employee or Member. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

"Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

"Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

"Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

"Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

"Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of death of the employee or Member.

For the purpose of this subsection, 'child' includes a natural child and an adopted child, but does not include a stepchild.

"(e) If an employee or Member, or former employee or Member, dies—

"(1) without a survivor, or

"(2) with a survivor or survivors and the right of all survivors under subchapter IV terminates before a claim for survivor annuity under such subchapter is filed,

the lump-sum credit shall be paid.

"(f) If all annuity rights under this chapter (other than under subchapter III of this chapter) based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

"(g) If an annuitant dies, annuity accrued and unpaid shall be paid.

"(h) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor shall be paid in the following order of precedence, and the payment bars recovery by any other person:

"First, to the duly appointed executor or administrator of the estate of the survivor.

"Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor, to such next of kin of the survivor as the Office determines to be entitled under the laws of the domicile of the survivor at the date of death.

"§ 8425. Mandatory separation

"(a) An air traffic controller who is otherwise eligible for immediate retirement under section 8412(e) shall be separated from the service on the last day of the month in which that air traffic controller becomes 56 years of age or completes 20 years of service if then over that age. The Secretary, under such regulations as the Secretary may prescribe, may exempt a controller having exceptional

skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.

"(b) A law enforcement officer or firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that law enforcement officer or firefighter becomes 55 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

"(c) The President, by Executive order, may exempt an employee from automatic separation under this section if the President determines the public interest so requires.

"SUBCHAPTER III—THRIFT SAVINGS PLAN

"§ 8431. Definition

"Notwithstanding section 8401 of this title, for the purpose of this subchapter, the term 'basic pay', when used with respect to an employee or Member, means the basic pay of the employee or Member established pursuant to law, without regard to any provision of law (except sections 5308 and 5382(b) of this title) limiting the rate of pay actually payable in any pay period (including any provision of law restricting the use of appropriated funds).

"§ 8432. Contributions

"(a) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b)(1), an amount not to exceed 10 percent of such individual's basic pay for such period. Contributions made under this subsection during any 6-month period for which an election period is provided under subsection (b)(1) shall be made each pay period during such 6-month period pursuant to a program of regular contributions provided in regulations prescribed by the Executive Director.

"(b)(1)(A) The Executive Director shall prescribe regulations under which employees and Members shall be afforded a reasonable period every 6 months to elect to make contributions under subsection (a), to modify the amount to be contributed under such subsection, or to terminate such contributions. An election to make such contributions shall remain in effect until modified or terminated.

"(B) The amount to be contributed pursuant to an election under subparagraph (A) shall be the percentage of basic pay or amount designated by the employee or Member.

"(2) Under the regulations—

"(A) an employee or Member who has not previously been eligible to make an election under this subsection shall not become so eligible until the second period (described in paragraph (1)) beginning after the date of commencing service as an employee or Member;

"(B) an employee or Member whose appointment or election to a position or office in the Federal Government follows a previous period of service during which that individual met the requirements of subparagraph (A) shall be eligible to make an election under this subsection notwithstanding any period of separation;

"(C) an employee or Member who elects under subparagraph (D) to terminate contributions shall not again become eligible to make an election under this subsection until the second period (described in paragraph (1)) commencing after the election to terminate; and

"(D) an election to terminate may be made under this subparagraph at any time other than during a period afforded under paragraph (1).

"(3) Notwithstanding paragraph (2)(A), an employee or Member who elects to become subject to this chapter under section 301 of the Federal Employees' Retirement System Act of 1986 may make the first election for the purpose of subsection (a) during the period prescribed for such purpose by the Executive Director. The period prescribed by the Executive Director shall commence on the date on which the employee or Member makes the election to become subject to this chapter.

"(c)(1) At the end of the pay period that includes the first date on which an employee or Member may make contributions under subsection (a) (without regard to whether the employee or Member has elected to make such contributions during such pay period), and at the end of each succeeding pay period, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the basic pay of such employee or Member for such pay period.

"(2)(A) In addition to contributions made under paragraph (1), the employing agency of an employee or Member who contributes to the Thrift Savings Fund under subsection (a) for any pay period shall make a contribution to the Thrift Savings Fund for the benefit of such employee or Member. The employing agency's contribution shall be made at the end of such pay period.

"(B) The amount contributed under subparagraph (A) by an employing agency with respect to a contribution of an employee or Member during any pay period shall be the amount equal to the sum of—

"(i) such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such period; and

"(ii) one-half of such portion of the amount of the employee's or Member's contribution as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

"(3)(A) There shall be contributed to the Thrift Savings Fund on behalf of each employee or Member described in su' paragraph (B) the amount determined under subparagraph (C).

"(B) An employee or Member referred to in subparagraph (A) is an employee or Member who—

"(i) is an employee or Member on January 1, 1987;

"(ii) has creditable service described in section 8411(b)(2) of this title; and

"(iii) has not received a refund of the amount of the retirement deductions made with respect to such service under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

"(C) The amount referred to in subparagraph (A) in the case of an employee or Member is equal to the sum of—

"(i) 1 percent of the total basic pay paid to such employee or Member for service described in section 8411(b)(2) of this title; and

"(ii) interest on such amount computed with respect to such service in the manner provided in paragraphs (2) and (3) of section 8334(e) of this title.

"(D) The Secretary of the Treasury shall credit to the Thrift Savings Fund, out of any sums in the Treasury not otherwise appropriated, the amounts determined by the Director to be necessary to carry out this paragraph.

"(d) Notwithstanding any other provision of this section, no contribution may be made under this section for any year to the extent that such contribution, when added to prior contributions for such year, exceeds any limitation under section 415 of the Internal Revenue Code of 1954.

"(e) The sums required to be contributed to the Thrift Savings Fund by an employing agency under subsection (c) for the benefit of an employee or Member shall be paid from the appropriation or fund available to such agency for payment of salaries of the employee's or Member's office or establishment. When an employee or Member in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee or Member.

"(f) Amounts contributed by an employee or Member under subsection (a) and amounts contributed with respect to such employee or Member under subsection (c) shall be deposited in the Thrift Savings Fund to the credit of that employee's or Member's account in accordance with such procedures as the Comptroller General of the United States may, in consultation with the Executive Director, prescribe in regulations.

"(g)(1) Except as provided in paragraphs (2) and (3), all contributions made under this section shall be fully nonforfeitable when made.

"(2) Contributions made for the benefit of an employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the employee separates from Government employment before completing—

"(A) 2 years of civilian service in the case of an employee who, at the time of separation, is serving in—

"(i) a position in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)(7) of this title);

"(ii) a position listed in section 5312, 5313, 5314, 5315, or 5316 of this title or a position placed in level IV or V of the Executive Schedule under section 5317 of this title; or

"(iii) a position in the Executive branch which is excepted from the competitive service by the Office by reason of the confidential and policy-determining character of the position; or

"(B) 3 years of civilian service in the case of an employee who is not serving in a position described in subparagraph (A) at the time of separation.

"(3) Contributions made for the benefit of a Member or Congressional employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the Member or Congressional employee separates from Government employment before completing 2 years of civilian service.

"(h) No transfers or contributions may be made to the Thrift Savings Fund except as provided in this chapter or section 8351 of this title.

"§ 8433. Benefits and election of benefits

"(a) An employee or Member who separates from Government employment is entitled to the amount of the balance in the employee's or Member's account (except for the portion of such amount forfeited under section 8432(g) of this title, if any) as provided in this section.

"(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to an immediate annuity under subchapter II of this chapter, any employee or Member who separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title, and any employee or Member who is entitled to receive disability benefits under subchapter V of this chapter is entitled and may elect—

"(1) to receive an immediate annuity from the Thrift Savings Fund;

"(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70½ years of age;

"(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence before April 1 of the year following the year in which the employee or Member becomes 70½ years of age; or

"(4) to transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

"(c) Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to a deferred

annuity under subchapter II of this chapter is entitled and may elect—

"(1) to receive an immediate annuity from the Thrift Savings Fund;

"(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70½ years of age;

"(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence during any period which (A) commences on or after the date on which payment of the employee's or Member's annuity under subchapter II of this chapter commences, and (B) ends not later than April 1 of the year following the year in which the employee or Member becomes 70½ years of age; or

"(4) to transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

"(d) Subject to section 8435 of this title, any employee or Member who separates from Government employment before becoming entitled to a deferred annuity under subchapter II of this chapter shall transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

"(e)(1) The Executive Director shall make each transfer elected under subsection (b)(4) or (c)(4) or required under subsection (d) directly to an eligible retirement plan or plans (as defined in section 402(a)(5)(E) of the Internal Revenue Code of 1954) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

"(2) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (1) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.

"(f)(1) Subject to paragraph (3)(A) and subsections (a) and (d) of section 8435 of this title, an employee or Member may change an election previously made under this subchapter.

"(2) Subject to paragraph (3)(B) and section 8435(d) of this title, a former employee or Member who has made an election pursuant to subsection (b)(2) or (c)(2) may modify the date specified in such election or in a previous modification under this paragraph.

"(3)(A) A former employee or Member may not change an election under this section on or after the date on which a payment is made in accordance with such election or, in the case of an election to receive an annuity, the date on which an annuity elected by the former employee or Member commences.

"(B) A modification of a date may not be made under paragraph (2) on or after such date and may not specify a date for the commencement of an annuity earlier than 1 month after the date on which the modification is submitted to the Executive Director.

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"(g) If an employee or Member (or former employee or Member) dies without having made an election under this section or after having elected an annuity under this section but before making an election under section 8434 of this title, an amount equal to the value of that individual's account (as of death) shall, subject to any decree, order, or agreement referred to in section 8435(d)(2) of this title be paid in a manner consistent with section 8424(d) of this title.

"(h) Unless otherwise elected under this section, benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on February 1 of the year following the latest of the year in which—

"(1) the employee, Member, former employee, or former Member becomes 65 years of age;

"(2) occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or

"(3) the employee, Member, former employee, or former Member separates from Government employment.

"(i)(1) At any time after December 31, 1987, and before separation, an employee or Member may apply to the Board for permission to borrow from the employee's or Member's account an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

"(2) An application under this subsection may be approved only for—

"(A) the purchase of a primary residence;

"(B) educational expenses;

"(C) medical expenses; or

"(D) financial hardship.

"(3) Loans under this subsection shall be subject to such conditions as the Board may prescribe consistent with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)). The conditions shall be included in regulations issued by the Executive Director.

"(4) A loan may not be made under this subsection to the extent that the loan would be treated as a taxable distribution under section 72(p) of the Internal Revenue Code of 1954.

"(5) A loan may not be made under this subsection unless the requirements of section 8435(f) of this title are satisfied.

"§ 8434. Annuities: methods of payment; election; purchase

"(a)(1) The Board shall prescribe methods of payment of annuities under this subchapter.

"(2) The methods of payment prescribed under paragraph (1) shall include, but not be limited to—

"(A) a method which provides for the payment of a monthly annuity only to an annuitant during the life of the annuitant;

"(B) a method which provides for the payment of a monthly annuity to an annuitant for the joint lives of the annuitant and the spouse of the annuitant and an appropriate monthly annuity to the one of them who survives the other of them for the life of the survivor;

"(C) a method described in subparagraph (A) which provides annual increases in the amount of the annuity payable;

"(D) a method described in subparagraph (B) which provides annual increases in the amount of the annuity payable; and

"(E) a method which provides for the payment of a monthly annuity—

"(i) to the annuitant for the joint lives of the annuitant and an individual who is designated by the annuitant under regulations prescribed by the Executive Director and (I) is a former spouse of the annuitant, or (II) has an insurable interest in the annuitant; and

"(ii) to the one of them who survives the other of them for the life of the survivor.

"(b) Subject to section 8435(c) of this title, under such regulations as the Executive Director shall prescribe, an employee, Member, former employee, or former Member who elects under section 8433 of this title to receive an annuity under this subchapter shall elect, on or before the date on which the annuity commences, one of the methods of payment prescribed under subsection (a).

"(c) Notwithstanding an elimination of a method of payment by the Board—

"(1) an employee, Member, former employee, or former Member who is entitled under section 8412 of this title to an immediate annuity not reduced under section 8415(f) of this title may elect the eliminated method if the elimination of such method became effective less than 5 years before the date on which the annuity commences; and

"(2) any other employee, Member, former employee, or former Member may elect such method of payment for amounts contributed by or on behalf of the employee, Member, former employee, or former Member under section 8432 of this title before such effective date and for earnings attributable to such amounts.

"(d)(1) At the time an annuity is to commence under this subchapter, the Executive Director shall expend the balance in the annuitant's account to purchase an annuity contract from any entity which, in the normal course of its business, sells and provides annuities.

"(2) The Executive Director shall assure, by contract entered into with each entity from which an annuity contract is purchased under paragraph (1), that the annuity shall be provided in accordance with the provisions of this subchapter and subchapter VII of this chapter.

"(3) An annuity contract purchased under paragraph (1) shall include such terms and conditions as the Executive Director requires for the protection of the annuitant.

"(4) The Executive Director shall require, from each entity from which an annuity contract is purchased under paragraph (1), a bond or proof of financial responsibility sufficient to protect the annuitant.

"§ 8435. Protections for spouses and former spouses

"(a)(1)(A) A married employee or Member (or former employee or Member) may make an election under subsection (b)(3), (b)(4), (c)(3), or (c)(4) of section 8433 of this title or change an election previously

made under subsection (b)(1), (b)(2), (c)(1), or (c)(2) of such section only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).

"(B) An employee or Member (or former employee or Member) may make an election or change referred to in subparagraph (A) if the employee or Member and the employee's or Member's spouse (or the former employee or Member and the former employee's or Member's spouse) jointly waive, by written election, any right which the spouse may have to a survivor annuity with respect to such employee or Member (or former employee or Member) under section 8434 of this title or subsection (c).

"(2) Paragraph (1) shall not apply to an election or change of election by an employee or Member (or former employee or Member) who establishes to the satisfaction of the Executive Director (at the time of the election or change and in accordance with regulations prescribed by the Executive Director)—

"(A) that the spouse's whereabouts cannot be determined; or

"(B) that, due to exceptional circumstances, requiring the spouse's waiver would otherwise be inappropriate.

"(b)(1) Except as provided in paragraph (2), a transfer may be made by an employee or Member (or former employee or Member) under section 8433(d) of this title only after the Executive Director notifies any current spouse and each former spouse of the employee or Member (or former employee or Member), if any, that the transfer is to be made.

"(2) Paragraph (1) may be waived with respect to a spouse or former spouse if the employee or Member (or former employee or Member) establishes to the satisfaction of the Executive Director that the whereabouts of such spouse or former spouse cannot be determined.

"(c)(1) Notwithstanding any election under subsection (b) of section 8434 of this title, the method described in subsection (a)(2)(B) of such section (or, if more than one form of such method is available, the form which the Board determines to be the one which provides for a surviving spouse a survivor annuity most closely approximating the annuity of a surviving spouse under section 8442 of this title) shall be deemed the applicable method under such subsection (b) in the case of an employee, Member, former employee, or former Member who is married on the date on which the employee's, Member's, former employee's, or former Member's annuity commences under this subchapter.

"(2) Paragraph (1) shall not apply—

"(A) in the case of an employee or Member retiring under section 8412, 8413, 8414, or 8451 of this title if—

"(i) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

"(ii) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described in subsection (a)(2)(A) or (a)(2)(B) make the requirement of a joint waiver inappropriate; or

"(B) in the case of an employee or Member not covered by subparagraph (A), if the employee or Member waives such method after—

"(i) having provided notification to the spouse of intent to waive; or

"(ii) establishing to the satisfaction of the Executive Director that the whereabouts of such spouse cannot be determined.

"(d)(1) An election, change of election, or modification of the commencement date of a deferred annuity shall not be effective under this subchapter and a transfer may not be made under section 8433(d) of this title to the extent that the election, change, modification, or transfer conflicts with any court decree, order, or agreement described in paragraph (2).

"(2) A court decree, order, or agreement referred to in paragraph (1) is, with respect to an employee or Member (or former employee or Member), a court decree of divorce, annulment, or legal separation issued in the case of such employee or Member (or former employee or Member) and any former spouse of the employee or Member (or former employee or Member) or any court order or court-approved property settlement agreement incident to such decree if—

"(A) the decree, order, or agreement expressly relates to any portion of the balance in the employee's or Member's (or former employee's or Member's) account; and

"(B) notice of the decree, order, or agreement was received by the Executive Director before—

"(i) the date on which payment is made, or

"(ii) in the case of an annuity, the date on which the annuity commences,

in accordance with the election, change, modification, or contribution referred to in paragraph (1).

"(3) The Executive Director shall prescribe regulations under which this subsection shall be applied in any case in which the Executive Director receives two or more decrees, orders, or agreements referred to in paragraph (1).

"(e)(1) Subject to paragraphs (2) through (7), a former spouse of a deceased employee or Member (or a deceased former employee or Member) who died after performing 18 or more months of service and a former spouse of a deceased former employee or Member who died entitled to an immediate or deferred annuity under subchapter II of this chapter is entitled to a survivor annuity under this subsection if and to the extent that—

"(A) an election under section 8434(a)(2)(E) of this title, or

"(B) any court decree, order, or agreement (described in subsection (d)(2), without regard to subparagraph (B) of such subsection) which relates to such deceased individual and such former spouse,

expressly provides for such survivor annuity.

"(2) Paragraph (1) shall apply only to payments made by the Executive Director after the date on which the Executive Director receives written notice of the election, decree, order, or agreement, and such additional information and documentation as the Executive Director may require.

"(3) The amount of the survivor annuity payable from the Thrift Savings Fund to a former spouse of a deceased employee, Member,

former employee, or former Member under this section may not exceed the excess, if any, of—

"(A) the amount of the survivor annuity determined for a surviving spouse of the deceased employee, Member, former employee, or former Member under the method described in subsection (c)(1), over

"(B) the total amount of all other survivor annuities payable under this subchapter to other former spouses of such deceased employee, Member, former employee, or former Member based on the order of precedence provided in paragraph (4).

"(4) If more than one former spouse of a deceased employee, Member, former employee, or former Member is entitled to a survivor annuity pursuant to this subsection, the amount of each such survivor annuity shall be limited appropriately to carry out paragraph (3) in the order of precedence established for the entitlements by the chronological order of the dates on which elections are properly made pursuant to section 8434(a)(2)(E) of this title and the dates on which the court decrees, orders, or agreements applicable to the entitlement were issued, as the case may be.

"(5) Subsections (c) and (d) of section 8445 of this title shall apply to an entitlement of a former spouse to a survivor annuity under this subsection.

"(6) For the purposes of this section, a court decree, order, or agreement or an election referred to in subsection (a) of this section shall not be effective, in the case of a former spouse, to the extent that the election is inconsistent with any joint waiver previously executed with respect to such former spouse under subsection (a)(2) or (c)(2).

"(7) Any payment under this subsection to any individual bars recovery by any other individual.

"(f)(1)(A) A loan may be made to a married employee or Member under section 8433(i) of this title only if the employee's or Member's spouse consents to such loan in writing.

"(B) A consent under subparagraph (A) shall be irrevocable with respect to the loan to which the consent relates.

"(C) Subparagraph (A) shall not apply to a loan to an employee or Member who establishes to the satisfaction of the Executive Director (at the time the employee or Member applies for such loan and in accordance with regulations prescribed by the Executive Director)—

"(i) that the spouse's whereabouts cannot be determined; or

"(ii) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

"(2) An application for a loan under section 8433(i) of this title shall not be approved if approval would have the result described in subsection (d)(1).

"(g) Waivers and notifications required by this section and waivers of the requirements for such waivers and notifications (as authorized by this section) may be made only in accordance with procedures prescribed by the Executive Director.

"(h) The protections provided by this section are in addition to the protections provided by section 8467 of this title.

"§ 8436. Administrative provisions

"(a) The Executive Director shall make or provide for payments and transfers in accordance with an election of an employee or Member under section 8433 or 8434(b) of this title or, if applicable, in accordance with section 8435 of this title.

"(b) Any election, change of election, or modification of a deferred annuity commencement date made under this subchapter shall be in writing and shall be filed with the Executive Director in accordance with regulations prescribed by the Executive Director.

"§ 8437. Thrift Savings Fund

"(a) There is established in the Treasury of the United States a Thrift Savings Fund.

"(b) The Thrift Savings Fund consists of the sum of all amounts contributed under section 8432 of this title and all amounts deposited under section 8479(b) of this title, increased by the total net earnings from investments of sums in the Thrift Savings Fund or reduced by the total net losses from investments of the Thrift Savings Fund, and reduced by the total amount of payments made from the Thrift Savings Fund (including payments for administrative expenses).

"(c) The sums in the Thrift Savings Fund are appropriated and shall remain available without fiscal year limitation—

"(1) to invest under section 8438 of this title;

"(2) to pay benefits or purchase annuity contracts under this subchapter;

"(3) to pay the administrative expenses of the Federal Retirement Thrift Investment Management System prescribed in subchapter VII of this chapter;

"(4) to make distributions for the purposes of section 8440(b) of this title;

"(5) to make loans to employees and Members as authorized under section 8433(i) of this title; and

"(6) to purchase insurance as provided in section 8479(b)(2) of this title.

"(d) Administrative expenses incurred to carry out this subchapter and subchapter VII of this chapter shall be paid first out of any sums in the Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund attributable to sums contributed to such Fund under section 8432(c) of this title.

"(e)(1) Subject to paragraphs (2) and (3), sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter.

"(2) Except as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process. For the purposes of this paragraph, a loan made from such Fund to an employee or Member shall not be considered to be an assignment or alienation.

"(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659).

"(f) The sums in the Thrift Savings Fund shall not be appropriated for any purpose other than the purposes specified in this section and may not be used for any other purpose.

"(g) All sums contributed to the Thrift Savings Fund by an employee or Member or by an employing agency for the benefit of such employee or Member and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such employee or Member.

"§ 8438. Investment of Thrift Savings Fund

"(a) For the purposes of this section—

"(1) the term 'Common Stock Index Investment Fund' means the Common Stock Index Investment Fund established under subsection (b)(1)(C);

"(2) the term 'equity capital' means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;

"(3) the term 'Fixed Income Investment Fund' means the Fixed Income Investment Fund established under subsection (b)(1)(B);

"(4) the term 'Government Securities Investment Fund' means the Government Securities Investment Fund established under subsection (b)(1)(A);

"(5) the term 'net worth' means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

"(6) the term 'plan' means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

"(7) the term 'qualified professional asset manager' means—

"(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) which—

"(i) has the power to manage, acquire, or dispose of assets of a plan; and

"(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of $1,000,000;

"(B) a savings and loan association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, which—

"(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and

"(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the pur-

pose of this clause, equity capital or net worth in excess of $1,000,000;

"(C) an insurance company which—

"(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;

"(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $1,000,000; and

"(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or

"(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of $50,000,000, and—

"(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of $750,000; or

"(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by—

"(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determination for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds $750,000;

"(II) a qualified professional asset manager described in subparagraph (A), (B), or (C); or

"(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $750,000; and

"(8) the term 'shareholder's or partner's equity', as used in paragraph (7)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (7)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on

which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section.

"(b)(1) The Board shall establish—

"(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (f);

"(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in—

"(i) insurance contracts;

"(ii) certificates of deposits; or

"(iii) other instruments or obligations selected by qualified professional asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time; and

"(C) a Common Stock Index Investment Fund as provided in paragraph (2).

"(2)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.

"(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

"(c)(1) Subject to subsection (e), the Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).

"(2) If an election has not been made with respect to any sums in the Thrift Savings Fund available for investment, the Executive Director shall invest such sums in the Government Securities Investment Fund.

"(d)(1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account and not subject to subsection (e) are to be invested or reinvested.

"(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

"(e)(1)(A) During each year specified under column 1 of table I set out in subparagraph (D), the Executive Director shall invest, with respect to each employee, Member, former employee, and former Member not less than the percentage determined under subparagraph (B) of the amount described in subparagraph (C) in the Government Securities Investment Fund.

"(B) For the purposes of subparagraph (A), the minimum percentage applicable to investments during a year specified under column

1 of table I is the percentage which corresponds to such year under column 2 of table I.

"(C) The amount to be invested as provided in subparagraph (A) in any year specified under column 1 of table I is the total amount contributed to the Thrift Savings Fund by an employee, Member, former employee, or former Member under section 8432(a) of this title and available for investment during such year.

"(D) Table I is as follows:

"TABLE I

"Column 1 Year:	*Column 2 Minimum percentage:*
1987	*100*
1988	*80*
1989	*60*
1990	*40*
1991	*20.*

"(2)(A) During each year specified under column 1 of table II set out in subparagraph (D), the Executive Director shall invest, with respect to each employee, Member, former employee, and former Member not less than the percentage determined under subparagraph (B) of the amount described in subparagraph (C) in the Government Securities Investment Fund.

"(B) For the purposes of subparagraph (A), the minimum percentage applicable to investments during a year specified under column 1 of table II is the percentage which corresponds to such year under column 2 of table II.

"(C) The amount to be invested as provided in subparagraph (A) in any year specified under column 1 of table II is the total amount contributed to the Thrift Savings Fund for the benefit of an employee, Member, former employee, or former Member under section 8432(c) of this title and available for investment during such year.

"(D) Table II is as follows:

"Table II

"Column 1 Year:	*Column 2 Minimum percentage:*
1987–1992	*100*
1993	*80*
1994	*60*
1995	*40*
1996	*20.*

"(3)(A) Before 1992, the sums invested in the Government Securities Investment Fund as required by paragraph (1) and the earnings attributable to the investment of such sums may not be reinvested in any investment fund other than the Government Securities Investment Fund.

"(B) Before 1997, the sums invested in the Government Securities Investment Fund as required by paragraph (2) and the earnings attributable to the investment of such sums may not be reinvested in any investment fund other than the Government Securities Investment Fund.

"(f)(1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.

"(2)(A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

"(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

"(g) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

"§ 8439. Accounting and information

"(a)(1) The Executive Director shall establish and maintain an account for each individual for whom contributions are made under section 8432(c)(1) of this title or who makes contributions to the Thrift Savings Fund under section 8351 of this title.

"(2) The balance in an individual's account at any time is the excess of—

"(A) the sum of—

"(i) all contributions made to the Thrift Savings Fund by the individual under section 8432(a) or 8351 of this title;

"(ii) all contributions made to such Fund for the benefit of the individual under section 8432(c) of this title; and

"(iii) the total amount of the allocations made to and reductions made in the account pursuant to paragraph (3), over

"(B) the amounts paid out of the Thrift Savings Fund with respect to such individual under this subchapter.

"(3) Pursuant to regulations prescribed by the Executive Director, the Executive Director shall allocate to each account an amount equal to a pro rata share of the net earnings and net losses from each investment of sums in the Thrift Savings Fund attributable to sums credited to such account, reduced by an appropriate share of the administrative expenses paid out of the net earnings under section 8437(d) of this title, as determined by the Executive Director.

"(b)(1) For the purposes of this subsection, the term 'qualified public accountant' shall have the same meaning as provided in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)).

"(2) The Executive Director shall annually engage, on behalf of all individuals for whom an account is maintained, an independent qualified public accountant, who shall conduct an examination of all accounts and other books and records maintained in the administration of this subchapter and subchapter VII as the public accountant considers necessary to enable the public accountant to make the determination required by paragraph (3). The examination shall be conducted in accordance with generally accepted auditing

standards and shall involve such tests of the accounts, books, and records as the public accountant considers necessary.

"(3) The public accountant conducting an examination under paragraph (2) shall determine whether the accounts, books, and records referred to in such paragraph have been maintained in conformity with generally accepted accounting principles applied on a basis consistent with the manner in which such principles were applied during the examination conducted under such paragraph during the preceding year. The public accountant shall transmit to the Board and the Comptroller General of the United States a report on his examination, including his determination under this paragraph.

"(4) In making a determination under paragraph (3), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant states his reliance in the report transmitted to the Board under such paragraph.

"(c)(1) The Board shall prescribe regulations under which each individual for whom an account is maintained shall be furnished with—

"(A) a periodic statement relating to the individual's account; and

"(B) a summary description of the investment options under section 8438 of this title covering, and an evaluation of, each such option the 5-year period preceding the date as of which such evaluation is made.

"(2) Information under this subsection shall be provided at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title, and in a manner designed to facilitate informed decisionmaking with respect to elections under sections 8432 and 8438 of this title.

"(d) Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3), respectively, of section 8438(a) of this title shall sign an acknowledgement prescribed by the Executive Director which states that the employee, Member, former employee, or former Member understands that an investment in either such Fund is made at the employee's, Member's, former employee's, or former Member's risk, that the employee, Member, former employee, or former Member is not protected by the Government against any loss on such investment, and that a return on such investment is not guaranteed by the Government.

"§ 8440. Tax treatment of the Thrift Savings Fund

"(a) For purposes of the Internal Revenue Code of 1954—

"(1) the Thrift Savings Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code;

"(2) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

"(3) subject to the provisions of subsection (b) and any dollar limitation on the application of section 402(a)(8) of such Code, contributions to the Thrift Savings Fund shall not be treated as

distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of this subchapter and section 8351 of this title, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

"(b)(1) Subsection (a)(2) shall not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements (other than any requirement relating to coverage) applicable to arrangements described in section 401(k) of the Internal Revenue Code of 1954 and to matching contributions.

"(2)(A) This subchapter shall not be treated as failing to meet the requirements of paragraph (1) for any year if the amount of the excess matching contributions and excess employee contributions for such year (and any income attributable to such contributions) is distributed before the close of the following year. Such contributions (and income) may be distributed without regard to any other provision of law.

"(B) For purposes of subparagraph (A), the term 'excess matching contributions' means, with respect to any year, the excess of—

"(i) the aggregate amount of contributions under section 8432(c) of this title actually made on behalf of highly compensated employees (as defined for purposes of section 401(k) of the Internal Revenue Code of 1954) for such year, over

"(ii) the maximum amount of such contributions permitted under the limitations of paragraph (1) (determined by reducing contributions made on behalf of highly compensated employees in order of the matching contribution percentages beginning with the highest of such percentages).

"(C) For purposes of subparagraph (A), the amount of excess employee contributions shall be determined under the principles of subparagraph (B).

"(D) Any distribution of the excess matching contributions or excess employee contributions for any year shall be made to highly compensated employees on the basis of the respective portions of such amounts attributable to each of such employees.

"(E) No early distribution tax, if any, under the Internal Revenue Code of 1954 shall be imposed on any amount required to be distributed under subparagraph (A).

"(c) Subsection (a) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term 'wages' for the purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

"SUBCHAPTER IV—SURVIVOR ANNUITIES

"§ 8441. Definitions

"For the purpose of this subchapter—

"(1) the term 'widow' means the surviving wife of an employee, Member, or annuitant, or of a former employee or Member, who—

"(A) was married to him for at least 9 months immediately before his death; or

"(B) is the mother of issue by that marriage;

"(2) the term 'widower' means the surviving husband of an employee, Member, or annuitant, or of a former employee or Member, who—

"(A) was married to her for at least 9 months immediately before her death; or

"(B) is the father of issue by that marriage;

"(3) the term 'dependent', in the case of any child, means that the employee, Member, or annuitant involved was, at the time of death of the employee, Member, or annuitant either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe; and

"(4) the term 'child' means—

"(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, (ii) a stepchild but only if the stepchild lived with the employee, Member, or annuitant in a regular parent-child relationship, (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee, Member, or annuitant and who is adopted by the widow or widower of the employee, Member, or annuitant after the death of such employee, Member, or annuitant;

"(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

"(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and section 8443, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such child shows to the satisfaction of the Office that such child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

"§ 8442. Rights of a widow or widower

"(a)(1) Except as provided in subsection (g), if an annuitant dies and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the annuitant, unless—

"(A) the right to an annuity was waived under section 8416(a) (and no election was subsequently made under section 8416(d) nullifying the waiver); or

"(B) in the case of a marriage after retirement, the annuitant did not file an election under section 8416 (b) or (c), as the case may be.

"(2) A spouse acquired after retirement is entitled to an annuity under this subsection (as provided in paragraph (1)) only upon electing this annuity instead of any other survivor benefit to which such spouse may be entitled under this subchapter or section 8424 or under another retirement system for Government employees.

"(b)(1) If an employee or Member dies after completing at least 18 months of civilian service creditable under section 8411 and is survived by a widow or widower, the widow or widower is entitled to—

"(A) an amount equal to the sum of—

"(i) 50 percent of the final annual rate of basic pay (or of the average pay, if higher) of the employee or Member; and

"(ii) $15,000 as adjusted under section 8462(e); and

"(B) if the employee or Member completed at least 10 years of service, an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the employee or Member, but without regard to subsection (f) of such section.

"(2) The Office shall prescribe regulations under which the total amount payable to a widow or widower under paragraph (1)(A) may, at the election of the widow or widower, be paid—

"(A) in a lump sum; or

"(B) on a monthly basis—

"(i) over a period of 3 years beginning on the day after the employee's or Member's death; or

"(ii) over any other period established under the regulations.

Any method of payment provided for under subparagraph (B) shall be designed such that the present value of the benefits provided under such method is actuarially equivalent to the present value of a lump-sum payment under subparagraph (A).

"(3) An amount payable under paragraph (1)(A) shall not be considered to be part of an annuity for purposes of this chapter.

"(c)(1) If a former employee or Member dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for an annuity, and is survived by a widow or widower to whom married on the date of separation, the widow or widower may elect to receive—

"(A) an annuity under paragraph (2); or

"(B) the lump-sum credit, if the widow or widower is the individual who would be entitled to the lump-sum credit and if such widow or widower files application therefor with the Office.

"(2)(A)(i) Subject to clause (ii) and subparagraph (B)(ii), the annuity of the widow or widower is equal to 50 percent of an annuity computed under section 8415 for the former employee or Member.

"(ii)(I) In computing an amount under section 8415 for a former employee or Member (described in subclause (II)) in order to compute the annuity for a widow or widower under this subsection, the computation under section 8415 shall be made as if the former employee or Member had attained the applicable minimum retirement age under section 8412(h).

"(II) This clause applies with respect to a former employee or Member who dies before having attained the applicable minimum retirement age under section 8412(h).

"(B)(i) Notwithstanding the first sentence of subsection (d)(1), the annuity of the widow or widower of a former employee or Member under subparagraph (A)(ii) commences—

"(I) on the day after the date on which the former employee or Member would have attained age 62; or

"(II) if the widow or widower so designates in the election, as of the day after the death of the former employee or Member.

"(ii) The present value of the annuity of a widow or widower who chooses the earlier commencement date under clause (i)(II) shall be actuarially equivalent to the present value of an annuity computed for the widow or widower, determined as if the commencement date under clause (i)(I) were applicable.

"(3)(A) Paragraphs (1) and (2) shall apply only in the case of an employee or Member who completes at least 10 years of service.

"(B) Nothing in this subsection shall be considered to affect the provisions of this chapter relating to a lump-sum credit in the case of the widow or widower of a former employee or Member who dies after completing less than 10 years of service.

"(d)(1) The annuity of a widow or widower under this section commences on the day after the death of the individual on whose service such annuity is based. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

"(A) dies; or

"(B) remarries before becoming 55 years of age.

"(2) In the case of a widow or widower whose annuity under this section is terminated because of remarriage before becoming 55 years of age, the annuity shall be restored at the same rate commencing on the day the remarriage is dissolved by death, divorce, or annulment, if—

"(A) the widow or widower elects to receive this annuity instead of any other survivor benefit to which such widow or widower may be entitled (under this subchapter or section 8424 or under another retirement system for Government employees) by reason of the remarriage; and

"(B) any lump sum paid on termination of the annuity is returned to the Fund.

"(e) The requirement in paragraphs (1)(A) and (2)(A) of section 8441 that the widow or widower of an annuitant, employee, or Member, or of a former employee or Member, have been married to such individual for at least 9 months immediately before the death of the individual in order to qualify as the widow or widower of such individual shall be deemed satisfied in any case in which the individual dies within the applicable 9-month period, if—

"(1) the death of the individual was accidental; or

"(2) the surviving spouse of the individual had been previously married to such individual and subsequently divorced, and the aggregate time married is at least 9 months.

"(f)(1) Subject to paragraph (4), a survivor who is entitled to an annuity under subsection (a) shall also be entitled to a supplementary annuity under this subsection.

"(2) A supplementary annuity under this subsection shall be equal to the lesser of—

"(A) the amount by which the survivor's assumed CSRS annuity exceeds the annuity payable to such survivor under subsection (a); or

"(B) the amount determined under paragraph (3).

"(3)(A) Except as provided in subparagraph (B), the amount under this paragraph for a survivor is the amount of widow's or widower's insurance benefits which would be payable to such survivor under title II of the Social Security Act (without regard to sections 202(e)(7), 202(f)(2), and 203 of such Act) based on the wages and self-employment income of the deceased annuitant, and determined—

"(i) as of the date on which the annuitant died; and

"(ii) as if the survivor had attained age 60 and made application for those benefits under subsection (e) or (f) of section 202 of such Act, as the case may be.

"(B) Any computation or determination under this paragraph shall be made in accordance with the applicable provisions of the Social Security Act, except that in computing any primary insurance amount under section 215 of such Act for purposes of determining an amount under this subsection, subparagraphs (A) and (C) of section 8421(b)(2) shall apply.

"(4) A supplementary annuity under this subsection—

"(A) shall be payable to a survivor only for calendar months ending before the calendar month in which such survivor first satisfies the minimum age requirement under section 202(e)(1)(B)(i) or 202(f)(1)(B)(i) of the Social Security Act, as the case may be;

"(B) shall not be payable to a survivor who would not be entitled to benefits under subsection (e) or (f) of section 202 of the Social Security Act based on the wages and self-employment income of the deceased annuitant (determined, as of the date of the annuitant's death, as if the survivor had attained age 60 and made appropriate application for benefits, but without regard to any restriction under either such subsection relating to remarriage); and

"(C) shall not be payable to a survivor for any calendar month in which such survivor is entitled (or would, on proper application, be entitled) to benefits under section 202(g) of the Social Security Act (relating to mother's and father's insurance benefits), or under section 202 (e) or (f) of such Act by reason of having become disabled, based on the wages and self-employment income of the deceased annuitant.

"(5) For the purpose of this subsection, the term 'assumed CSRS annuity', as used in the case of a survivor, means the amount of the annuity to which such survivor would be entitled under subchapter III of chapter 83 of this title based on the service of the deceased annuitant, determined—

"(A) as of the day after the date of the annuitant's death;

"(B) as if the survivor had made appropriate application therefor; and

"(C) as if the service of the deceased annuitant were creditable under such subchapter.

"(6) An amount payable under this subsection shall be adjusted under section 8462 and shall otherwise be treated under this chapter in the same way as an amount payable under subsection (a).

"(g)(1) If the widow or widower of an annuitant under section 8452 (hereinafter in this subsection referred to as a 'disability annuitant') is determined under subsection (a) to be entitled to an annuity based on the service of such disability annuitant, the annuity of the widow or widower shall be equal to 50 percent of the amount determined under paragraph (2), rather than of the amount referred to in subsection (a).

"(2)(A) Except as provided in subparagraph (B), the amount on which the annuity of the widow or widower of a disability annuitant is based shall be the amount of the annuity to which such disability annuitant was entitled, as computed under section 8452 (including appropriate reduction under subsection (a)(2) of such section and any adjustments under section 8462 allowed under section 8452), as of the day before the date of the disability annuitant's death.

"(B)(i) In the case of a widow or widower entitled to an annuity based on the service of a disability annuitant who dies before age 62, the amount under clause (ii) shall apply instead of the amount which would otherwise apply under subparagraph (A).

"(ii)(I) Subject to subclause (II), the amount of the annuity to which the disability annuitant was entitled as of the day before the date of death shall be considered to be the amount which would be computed with respect to such disability annuitant under section 8452(b) if the disability annuitant had attained age 62 on the day before date of death.

"(II) For purposes of any such computation under section 8452(b)(2) pursuant to this clause, creditable service shall (in addition to the service which would otherwise be used under subparagraph (B)(i) of such section) include the period of time between date of death and the date of the sixty-second anniversary of the birth of the annuitant, and average pay shall be adjusted in accordance with subparagraph (B)(ii) of such section only through date of death.

"(h) The following rules shall apply notwithstanding any other provision of this section:

"(1) The annuity payable under this section to a widow or widower may not exceed the difference between—

"(A) the amount of the annuity which would otherwise be payable to such widow or widower under this section; and

"(B) the amount of the annuity payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on an election made under section 8417(b) or a court order previously issued or agreement previously entered into as described in section 8445(a).

"(2) The amount payable under subsection (b)(1)(A) to a widow or widower may not exceed the difference between—

"(A) the amount which would otherwise be payable to such widow or widower under such subsection; and

"(B) the portion of such amount payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on a court order previously issued or agreement previously entered into.

"(3) A lump-sum credit under subsection (c)(2) shall be subject to the same terms and conditions as apply with respect to a lump-sum credit under section 8424(b).

"§ 8443. Rights of a child

"(a)(1) If an employee or Member dies after completing at least 18 months of civilian service which is creditable under section 8411, or an annuitant dies, each surviving child is, for any month, entitled to an annuity equal to—

"(A) the amount by which the applicable amount under paragraph (2) for such month exceeds the applicable amount under paragraph (3) for such month, divided by

"(B) the number of children entitled to a payment under this section for such month.

"(2) The applicable amount under this paragraph for any month is the total amount to which the surviving child or children (as the case may be) of the annuitant, employee, or Member would be entitled for such month under subchapter III of chapter 83 based on the service of such annuitant, employee, or Member, if the service of such annuitant, employee, or Member were creditable under such subchapter.

"(3) The applicable amount under this paragraph for any month is the total amount of child's insurance benefits which are payable (or would, on proper application, be payable) under title II of the Social Security Act for such month based on the wages and self-employment income of such annuitant, employee, or Member.

"(b) The annuity of a child under this subchapter—

"(1) commences on the day after the annuitant, employee, or Member dies;

"(2) commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by section 8441(4), if any lump sum paid is returned to the Fund; or

"(3) commences or resumes on the first day of the month in which the child later becomes or again becomes incapable of self-support because of a mental or physical disability incurred before age 18 (or a later recurrence of such disability), if any lump sum paid is returned to the Fund.

This annuity and the right thereto terminate on the last day of the month before the child—

"(A) becomes 18 years of age unless then a student as described or incapable of self-support;

"(B) becomes capable of self-support after becoming 18 years of age unless then such a student;

"(C) becomes 22 years of age if then such a student and capable of self-support;

"(D) ceases to be such a student after becoming 18 years of age unless then incapable of self-support; or

"(E) dies or marries;

whichever occurs first. On the death of the surviving wife or husband, or former wife or husband, or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the wife or husband, former wife or husband, or child had not survived the annuitant, employee, or Member.

"§ 8444. Rights of a named individual with an insurable interest

"The annuity of a survivor named under section 8420(a) is 55 percent of the reduced annuity of the retired employee or Member determined under paragraph (2) of such section 8420(a). The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

"§ 8445. Rights of a former spouse

"(a) Subject to subsections (b) through (e), a former spouse of a deceased employee, Member, or annuitant (or of a former employee or Member who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity) is entitled to an annuity under this section, if and to the extent expressly provided for in an election under section 8417(b), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

"(b)(1) The annuity payable to a former spouse under this section may not exceed the difference between—

"(A) the amount applicable in the case of such former spouse, as determined under paragraph (2); and

"(B) the amount of any annuity payable under this section to any other former spouse of the employee, Member, or annuitant, or former employee or Member, based on an election previously made under section 8417(b), or a court order previously issued or agreement previously entered into as described in subsection (a).

"(2) The applicable amount, for purposes of paragraph (1)(A) in the case of a former spouse, is the amount of the annuity which would be payable under the provisions of section 8442 (including subsection (f) of such section, but without regard to subsection (h) of such section) if such former spouse were a widow or widower entitled to an annuity under such provisions based on the service of the deceased employee, Member, or annuitant, or former employee or Member.

"(c) The commencement and termination of an annuity payable under this section shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

"(1) shall not commence before—

"(A) the day after the employee, Member, or annuitant, or former employee or Member, dies; or

"(B) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe;

whichever is later; and

"(2) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

"(d) For purposes of this chapter, a modification in a decree, order, agreement, or election referred to in subsection (a) shall not be effective—

"(1) if such modification is made after the retirement or death of the employee, Member, or annuitant, or former employee or Member, concerned; and

"(2) to the extent that such modification involves an annuity under this section.

"(e) For purposes of this chapter, a decree, order, agreement, or election referred to in subsection (a) shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint waiver previously executed with respect to such former spouse under section 8416(a).

"(f)(1) Any amount under section 8442(b)(1)(A) which would otherwise be payable to a widow or widower based on the service of another individual shall be paid (in whole or in part) by the Office to a former spouse of such individual if and to the extent expressly provided for in the terms of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement incident to any decree of divorce, annulment, or legal separation.

"(2) Paragraph (1) shall apply only to payments made by the Office after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

"(g) Any payment under this section to a person bars recovery by any other person.

"SUBCHAPTER V—DISABILITY BENEFITS

"§ 8451. Disability retirement

"(a)(1)(A) An employee who completes at least 18 months of civilian service creditable under section 8411 and has become disabled shall be retired on the employee's own application or on application by the employee's agency.

"(B) For purposes of this subsection, an employee shall be considered disabled only if the employee is found by the Office to be unable, because of disease or injury, to render useful and efficient service in the employee's position.

"(2)(A) Notwithstanding paragraph (1), an employee shall not be eligible for disability retirement under this section if the employee has declined a reasonable offer of reassignment to a vacant position in the employee's agency for which the employee is qualified if the position—

"(i) is at the same grade (or pay level) as the employee's most recent grade (or pay level) or higher;

"(ii) is within the employee's commuting area; and

"(iii) is one in which the employee would be able to render useful and efficient service.

"(B) An employee who is applying for disability retirement under this subchapter shall be considered for reassignment by the employee's agency to a vacant position described in subparagraph (A) in accordance with such procedures as the Office shall by regulation prescribe.

"(C) An employee is entitled to appeal to the Merit Systems Protection Board under section 7701 any determination that the employee is not unable, because of disease or injury, to render useful and efficient service in a position to which the employee has declined reassignment under this section.

"(D) For purposes of subparagraph (A), an employee of the United States Postal Service shall not be considered qualified for a position if such position is in a different craft or if reassignment to such position would be inconsistent with the terms of a collective-bargaining agreement covering the employee.

"(b) A Member who completes at least 18 months of service as a Member and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application.

"(c) An employee or Member retiring under this section is entitled to an annuity computed under section 8452.

"§ 8452. Computation of disability annuity

"(a)(1)(A) Except as provided in paragraph (2), or subsection (b), (c), or (d), the annuity of an annuitant under this subchapter—

"(i) for the period beginning on the date on which such annuity commences, or is restored (as described in section 8455(b)(2) or (3)), and ending at the end of the twelfth month beginning on or after such date, shall be equal to 60 percent of the annuitant's average pay; and

"(ii) after the end of the period referred to in clause (i), shall be equal to 40 percent of the annuitant's average pay.

"(B) An annuity computed under this paragraph shall not, for purposes of any adjustment under section 8462 (including any adjustment under subsection (c)(1) of such section), be considered to have commenced until after such annuity ceases to be determined under subparagraph (A)(i).

"(2)(A) For any month in which an annuitant is entitled both to an annuity under this subchapter as computed under paragraph (1) and to a disability insurance benefit under section 223 of the Social Security Act, the annuitant's annuity for such month (as so computed) shall—

"(i) if such month occurs during a period referred to in paragraph (1)(A)(i), be reduced by 100 percent of the annuitant's assumed disability insurance benefit for such month; or

"(ii) if such month occurs other than during a period referred to in paragraph (1)(A)(i), be reduced by 60 percent of the annuitant's assumed disability insurance benefit for such month;

except that an annuity may not be reduced below zero by reason of this paragraph.

"(B)(i) For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

"(I) the amount of the disability insurance benefit to which the annuitant would have been entitled under section 223 of the

Social Security Act for the month in which the annuity under this subchapter commenced, or was restored, determined as if such annuitant had then satisfied all requirements for entitlement to a benefit under such section, adjusted by

"(II) all adjustments made under section 8462(b) between the date on which the annuity commenced, or was restored, and the start of the month involved (without regard to whether the annuitant's annuity was affected by any of those adjustments).

For purposes of computing the assumed disability insurance benefit, the month in which the annuitant's disability began (as determined under section 216(i)(2)(C) of the Social Security Act) shall be the month in which the annuity commenced or, if earlier (and if a determination was actually made) the month determined under such section.

"(ii) For purposes of applying section 224 of the Social Security Act to the assumed disability insurance benefit used to compute the reduction under this paragraph, the amount of the annuity under this subchapter which is considered shall be the amount of the annuity as determined before the application of this paragraph.

"(b)(1) Except as provided in subsection (d), if an annuitant is entitled to an annuity under this subchapter as of the day before the date of the sixty-second anniversary of the annuitant's birth (hereinafter in this section referred to as the annuitant's 'redetermination date'), such annuity shall be redetermined under paragraph (3) or (4), as applicable. Effective as of the annuitant's redetermination date, the annuity (as so redetermined) shall be in lieu of any annuity to which such annuitant would otherwise be entitled under this subchapter.

"(2)(A) In order to carry out paragraphs (3) and (4), the Office shall compute an annuity for the annuitant under section 8415.

"(B) In performing a computation under this paragraph—

"(i) creditable service of the annuitant shall be increased by including the period (or periods), if any, before the annuitant's redetermination date during which the annuitant was entitled to an annuity under this subchapter; and

"(ii) the average pay which would otherwise be used shall be adjusted to reflect all adjustments made under section 8462(b) with respect to any period (or periods) referred to in clause (i) (without regard to whether the annuitant's annuity was affected by any of those adjustments).

"(3) If, as of the day before the annuitant's redetermination date, the annuitant's annuity is subject to reduction under subsection (a)(2), the annuitant's redetermined annuity shall be the lesser of—

"(A) the amount determined with respect to such annuitant under paragraph (2); or

"(B) subject to the following sentence, the amount (converted so as to be expressed as an annual amount) which would otherwise be payable under this subchapter for the month in which occurs the day before the annuitant's redetermination date, as computed under subsection (a) (based on the assumption that the annuitant was entitled to an annuity under this subchapter, and to a disability insurance benefit under section 223 of the Social Security Act, for the entirety of such month).

If the annuitant's redetermination date occurs during the period described in subsection (a)(1)(A), the amount used under subparagraph (B) may not exceed the amount (converted so as to be expressed as an annual amount) which would otherwise be payable under this subchapter for the first month after such period, as computed under subsection (a) based on the assumption that the annuitant was entitled to an annuity under this subchapter, and to a disability insurance benefit under section 223 of the Social Security Act, for the entirety of such month.

"(4) If, as of the day before the annuitant's redetermination date, the annuitant's annuity is not subject to reduction under subsection (a)(2), the annuitant's redetermined annuity shall be the lesser of—

"(A) the amount determined with respect to such annuitant under paragraph (2); or

"(B) the amount which would be used for such annuitant under subparagraph (B) of paragraph (3) (as determined subject to the second sentence of such paragraph), if such paragraph applied to such annuitant.

"(c) Except as provided in subsection (d), the annuity of an annuitant under this subchapter shall be computed under section 8415 if—

"(1) such annuity commences, or is restored, beginning on or after the redetermination date of the annuitant; or

"(2) as of the day on which such annuity commences, or is restored, the annuitant satisfies the age and service requirements for entitlement to an annuity under section 8412 (other than subsection (g) of such section).

"(d) The annuity to which an annuitant is entitled under this section shall not be less than the amount of an annuity computed under section 8415 (excluding subsection (f) of such section).

"§ 8453. Application

"A claim may be allowed under this subchapter only if application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who, at the date of separation from service or within 1 year thereafter, is mentally incompetent if the application is filed with the Office within 1 year from the date of restoration of the employee or Member to competency or the appointment of a fiduciary, whichever is earlier.

"§ 8454. Medical examination

"An annuitant receiving a disability retirement annuity from the Fund shall be examined under the direction of the Office—

"(1) at the end of 1 year from the date of the disability retirement; and

"(2) annually thereafter until becoming 60 years of age;

unless the disability is permanent in character. If the annuitant fails to submit to examination as required by this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

"§ 8455. Recovery; restoration of earning capacity

"(a)(1) If an annuitant receiving a disability retirement annuity from the Fund recovers from the disability before becoming 60 years of age, payment of the annuity terminates on reemployment by the Government or 1 year after the date on which the Office determines that the annuitant has recovered, whichever is earlier.

"(2) If an annuitant receiving a disability annuity from the Fund, before becoming 60 years of age, is restored to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, payment of the annuity terminates 180 days after the end of the calendar year in which earning capacity is so restored. Earning capacity is deemed restored if in any calendar year the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied immediately before retirement.

"(b)(1) If an annuitant whose annuity is terminated under subsection (a) is not reemployed in a position in which that individual is subject to this chapter, such individual is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of subchapter II of this chapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of such subchapter.

"(2) If an annuitant whose annuity is terminated under subsection (a)(2)—

"(A) is not reemployed in a position subject to this chapter; and

"(B) has not recovered from the disability for which that individual was retired;

the annuity of such individual shall be restored at the applicable rate under section 8452 effective the first of the year following any calendar year in which such individual's income from wages or self-employment or both is less than 80 percent of the current rate of pay of the position occupied immediately before retirement.

"(3) If an annuitant whose annuity is terminated because of a medical finding that the individual has recovered from disability is not reemployed in a position in which such individual is subject to this chapter, the annuity of such individual shall be restored at the applicable rate under section 8452 effective from the date on which the Office determines that there has been a recurrence of the disability.

"(4) Paragraphs (2) and (3) shall not apply in the case of an annuitant receiving an annuity from the Fund under subchapter II of this chapter.

"§ 8456. Relationship to workers' compensation

"(a)(1) An individual is not entitled to receive an annuity under this subchapter and compensation for injury to or disability of the individual under subchapter I of chapter 81 covering the same period of time.

"(2) Paragraph (1) does not bar the right of a claimant to the greater benefit conferred by either subchapter referred to in such paragraph for any part of the period referred to in such paragraph.

"(3) Paragraph (1) and the provisions of subchapter I of chapter 81 do not deny an individual an annuity which the individual is entitled to receive under this chapter on account of service performed by the individual and do not deny any concurrent benefit to the individual under subchapter I of chapter 81 on account of the death of another individual.

"(b)(1) Subject to paragraph (2), an individual's receipt of a lump-sum payment for compensation under section 8135 shall not affect the individual's entitlement to an annuity under this subchapter.

"(2) If an annuity is payable under this subchapter by reason of the same disability for which a lump-sum payment of compensation referred to in paragraph (1) has been made, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the disability annuity, the individual shall—

"(A) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

"(B) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding under this paragraph, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

"§ 8457. Military reserve technicians

"(a)(1) Except as provided in paragraph (2) or (3), an individual shall be retired under this subchapter if the individual—

"(A) is separated from employment as a military reserve technician by reason of a disability that disqualifies the individual from membership in a reserve component of the Armed Forces specified in section 261(a) of title 10 or from holding the military grade required for such employment;

"(B) is not considered to be disabled under section 8451(a)(1)(B);

"(C) is not appointed to a position in the Government (whether under subsection (c) or otherwise); and

"(D) has not declined an offer of an appointment to a position in the Government under subsection (c).

"(2) Payment of any annuity for an individual pursuant to this section terminates—

"(A) on the date the individual is appointed to a position in the Government (whether pursuant to subsection (c) or otherwise);

"(B) on the date the individual declines an offer of appointment to a position in the Government under subsection (c); or

"(C) as provided under section 8455(a).

"(3) An individual eligible to retire under section 8414(c) shall not be eligible to retire under this section.

"(b) Any individual applying for or receiving any annuity pursuant to this section shall, in accordance with regulations prescribed by the Office, be considered by any agency of the Government before any vacant position in the agency is filled if—

"(1) the position is located within the commuting area of the individual's former position;

"(2) the individual is qualified to serve in such position, as determined by the head of the agency; and

"(3) the position is at the same grade or equivalent level as the position from which the individual was separated.

"SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

"§ 8461. Authority of the Office of Personnel Management

"(a) The Office shall pay all benefits that are payable under subchapter II, IV, V, or VI of this chapter from the Fund.

"(b) The Office shall administer all provisions of this chapter not specifically required to be administered by the Board, the Executive Director, the Secretary of Labor, or any other officer or agency.

"(c) The Office shall adjudicate all claims under the provisions of this chapter administered by the Office.

"(d) The Office shall determine questions of disability and dependency arising under the provisions of this chapter administered by the Office. Except to the extent provided under subsection (e), the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under the provisions of this chapter administered by the Office. The Office may suspend or deny annuity for failure to submit to examination.

"(e)(1) Subject to paragraph (2), an administrative action or order affecting the rights or interests of an individual or of the United States under the provisions of this chapter administered by the Office may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

"(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8451, the procedures under section 7701 shall apply and the decision of the Board shall be subject to judicial review under section 7703.

"(f) The Office shall fix the fees for examinations made under subchapter V of this chapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering the provisions of this chapter administered by the Office.

"(g) The Office may prescribe regulations to carry out the provisions of this chapter administered by the Office.

"(h)(1) Each Government agency shall furnish the Director with such information as the Director determines necessary in order to administer this chapter.

"(2) The Director, in consultation with the officials from whom such information is requested, shall establish (by regulation or otherwise) such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

"(i) In making a determination of 'actuarial equivalence' under this chapter, the economic assumptions used shall be the same as the economic assumptions most recently used by the Office (before the determination of actuarial equivalence involved) in determining the normal-cost percentage of the System.

"(j)(1) Notwithstanding any other provision of this chapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this chapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

"(A) determine entitlement to benefits under this chapter based on the service of employees of the Central Intelligence Agency;

"(B) maintain records relating to the service of such employees;

"(C) compute benefits under this chapter based on the service of such employees;

"(D) collect deposits to the Fund made by such employees, their spouses, their former spouses, and their survivors;

"(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

"(F) perform such other functions under this chapter (other than under subchapters III and VII of this chapter) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

"(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1).

"(k)(1) The Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, may—

"(A) maintain exclusive records relating to elections, contributions, and accounts under the Thrift Savings Plan provided in subchapter III of this chapter in the case of employees of the Central Intelligence Agency;

"(B) provide that contributions by, or on behalf of, such employees to the Thrift Savings Plan be accounted for by such Executive Director in aggregate amounts;

"(C) make the necessary disbursements from, and the necessary allocations of earnings, losses, and charges to, individual accounts of such employees under the Thrift Savings Plan; and

"(D) perform such other functions under subchapters III and VII of this chapter (but not including investing sums in the Thrift Savings Fund) with respect to employees of the Central

Intelligence Agency as the Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, determines to be appropriate.

"(2) The Executive Director of the Federal Retirement Thrift Investment Board may not exercise authority under this chapter in the case of employees of the Central Intelligence Agency to the extent that the Director of Central Intelligence exercises authority provided in paragraph (1).

"(3) The Executive Director of the Federal Retirement Thrift Investment Board shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence determines necessary to carry out this subsection.

"(l) Subsection (h)(1), and sections 8439(b) and 8474(c)(4), shall be applied with respect to information relating to employees of the Central Intelligence Agency in a manner that protects intelligence sources, methods, and activities.

"(m)(1) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board, shall by regulation prescribe appropriate procedures to carry out subsections (j), (k), and (l).

"(2) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Fund, and from the Thrift Savings Fund, under this chapter.

"(3) The Director of Central Intelligence shall submit the regulations prescribed under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

"§ 8462. Cost-of-living adjustments

"(a) For the purpose of this section—

"(1) the term 'base quarter', as used with respect to a year, means the calendar quarter ending on September 30 of such year;

"(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter; and

"(3) the term 'percent change in the price index', as used with respect to a year, means the percentage derived by—

"(A) reducing—

"(i) the price index for the base quarter of such year, by

"(ii) the price index for the base quarter of the preceding year in which an adjustment under this subsection was made;

"(B) dividing the difference under subparagraph (A) by the price index referred to in subparagraph (A)(ii); and

"(C) multiplying the quotient under subparagraph (B) by 100.

"(b)(1) Except as provided in subsection (c), effective December 1 of any year in which an adjustment under this subsection is to be

made, as determined under paragraph (2), each annuity payable from the Fund under this chapter (other than an annuity under section 8443) having a commencing date not later than such December 1 shall be adjusted as follows:

"(A) If the percent change in the price index for the year does not exceed 3 percent, each annuity subject to adjustment under this subsection shall be increased by the lesser of—

"(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent); or

"(ii) 2 percent.

"(B) If the percent change in the price index for the year exceeds 3 percent, each annuity subject to adjustment under this subsection shall be increased by the excess of—

"(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent), over

"(ii) 1 percent.

"(2) An adjustment under this subsection shall be made in a year only if the price index for the base quarter of such year exceeds the price index for the base quarter of the preceding year in which an adjustment under this subsection was made.

"(3) An annuity under this chapter shall not be subject to adjustment under section 8340.

"(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

"(1) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to an annuitant or survivor (other than a child under section 8443) whose annuity has not been increased under this subsection or subsection (b) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

"(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

"(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

"(i) for which the annuity was payable from the Fund before the effective date of the increase; or

"(ii) in the case of a survivor of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

"(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (other than a widow or widower whose annuity is computed under section 8442(g) or a child under section 8443) shall be increased by the total percentage by which the deceased annuitant's annuity had been increased under this section during the period beginning on the date the deceased annuitant's annuity commenced and ending on the date of the deceased annuitant's death.

"(3)(A) An adjustment under subsection (b) for any year shall not be effective with respect to the annuity of an annuitant who is under 62 years of age as of the date on which such adjustment would otherwise first take effect.

"(B)(i) Except as provided in clause (ii), this paragraph applies only with respect to an annuitant under section 8412, 8413, or 8414.

"(ii) This paragraph does not apply with respect to an annuitant under subsection (d) or (e) of section 8412 or (in the case of an annuitant separated from service as a military reserve technician as a result of disability) under section 8414(c).

"(4) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to a widow or widower whose annuity is computed under section 8442(g) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

"(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

"(B) the number of months (not to exceed 12 months, counting any portion of a month as a month) since—

"(i) the effective date of the adjustment last made under this section in the annuity of the annuitant on whose service on the widow's or widower's annuity is based; or

"(ii) if the annuity of the annuitant (referred to in clause (i)) has not been increased under this section, the commencement date of such annuitant's annuity (determined subject to section 8452(a)(1)(B)).

"(d) The monthly installment of an annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly installment shall, after adjustment, reflect an increase of at least $1.

"(e) The $15,000 amount referred to in section 8442(b)(1)(A)(ii) shall be increased at the same time that, and by the same percent as the percentage by which, annuities under subchapter III of chapter 83 are increased.

"§ 8463. Rate of benefits

"Each annuity payable from the Fund is stated as an annual amount, one-twelfth of which, rounded to the next lower dollar, constitutes the monthly rate payable on the first business day of the first month beginning after the month for which it has accrued.

"§ 8464. Commencement and termination of annuities of employees and Members

"(a)(1) Except as otherwise provided in this chapter—

"(A) an annuity payable from the Fund commences on the first day of the month after—

"(i) separation from the service, in the case of an employee or Member retiring under section 8412, or subsection (a) or (b)(1)(B) of section 8414; or

"(ii) pay ceases, and the applicable age and service requirements are met, in the case of an employee or Member retiring under section 8413;

"(B) an annuity payable from the Fund commences on the day after separation from the service in the case of an employee retiring under subsection (b)(1)(A) or (c) of section 8414; and

"(C) an annuity payable from the Fund commences on the day after separation from the service or the day after pay ceases and the requirements for title to an annuity are met in the case of an employee or Member retiring under section 8451.

"(2) Notwithstanding paragraph (1)(A)(i), an annuity payable from the Fund commences on the day after separation from the service in the case of an employee or Member—

"(A) who retires under section 8412; and

"(B) whose separation occurs upon the expiration of a term (or other period) for which the individual was appointed or elected.

"(b) Except as otherwise provided in this chapter, the annuity of an annuitant under subchapter II or V of this chapter terminates on the date death or other terminating event occurs.

"§ 8465. Waiver, allotment, and assignment of benefits

"(a) An individual entitled to an annuity payable from the Fund may decline to accept all or any part of the amount of the annuity by a waiver signed and filed with the Office. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver is in effect.

"(b) An individual entitled to an annuity payable from the Fund may make allotments or assignments of amounts from the annuity for such purposes as the Office considers appropriate.

"§ 8466. Application for benefits

"(a) No payment of benefits based on the service of an employee or Member shall be made from the Fund unless an application for payment of the benefits is received by the Office before the one hundred and fifteenth anniversary of the birth of the employee or Member.

"(b) Notwithstanding subsection (a), after the death of an employee, Member, or annuitant, or former employee or Member, a benefit based on the service of such employee, Member, or annuitant, or former employee or Member, shall not be paid under subchapter II or IV of this chapter unless an application therefor is received by the Office within 30 years after the death or other event which establishes the entitlement to the benefit.

"(c) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

"§ 8467. Court orders

"(a) Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined under section 8331) based on the service of that individual shall be paid (in whole or in part) by the Office or the Executive Director (as the case may be), to another person if and to the extent that the terms of any court decree of di-

vorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide. Any payment under this subsection to a person bars recovery by any other person.

"(b) Subsection (a) shall apply only to payments made by the Office or the Executive Director under this chapter after the date on which the Office or the Executive Director (as the case may be) receives written notice of such decree, order, or agreement, and such additional information and documentation as the Office or the Executive Director may require.

"§ 8468. Annuities and pay on reemployment

"(a) If an annuitant becomes employed in an appointive or elective position in the Government, payment of any annuity under subchapter II or V of this chapter to the annuitant terminates effective on the date of the employment. The annuitant's service on and after the date the annuitant becomes so employed is covered by this chapter unless such service is performed as a justice or judge of the United States (as defined by section 451 of title 28) or as an employee subject to another retirement system for Government employees. Upon termination of the employment, the rights of the annuitant under subchapter II or V of this chapter (as the case may be) shall be redetermined. If the annuitant dies while still so employed, a survivor annuity payable with respect to the deceased annuitant shall be redetermined as if the employment had otherwise terminated on the date of death.

"(b) The amount of an annuity resulting from a redetermination of rights under this chapter pursuant to subsection (a) shall not be less than the amount of the terminated annuity plus any increases which (but for the reemployment) would have been payable under section 8462 after the termination of the annuity and before the commencement of the redetermined annuity.

"(c) The redetermined annuity commences on the first day of the month after termination of employment.

"§ 8469. Withholding of State income taxes

"(a) The Office shall, in accordance with this section, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

"(b) An annuitant may have in effect at any time only one request for withholding under this section, and an annuitant may not have more than two such requests in effect during any one calendar year.

"(c) Subject to subsection (b), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after

the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

"(d) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this section. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

"(e) For the purpose of this section—

"(1) the term 'State' means a State, the District of Columbia, or any territory or possession of the United States; and

"(2) the term 'annuitant' includes a survivor who is receiving an annuity from the Fund.

"§ 8470. Exemption from legal process; recovery of payments

"(a) An amount payable under subchapter II, IV, or V of this chapter is not assignable, either in law or equity, except under the provisions of section 8465 or 8467, or subject to execution, levy, attachment, garnishment or other legal process, except as otherwise may be provided by Federal laws.

"(b) Recovery of payments under subchapter II, IV, or V of this chapter may not be made from an individual when, in the judgment of the Office, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money paid under subchapter II, IV, or V of this chapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

"SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

"§ 8471. Definitions

"For the purposes of this subchapter—

"(1) the term 'beneficiary' means an individual (other than a participant) entitled to payment from the Thrift Savings Fund under subchapter III of this chapter;

"(2) the term 'Council' means the Employee Thrift Advisory Council established under section 8473 of this title;

"(3) the term 'participant' means an individual for whom an account has been established under section 8439 of this title;

"(4) the term 'person' means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or labor organization; and

"(5) the term 'Thrift Savings Fund' means the Thrift Savings Fund established under section 8437 of this title.

"§ 8472. Federal Retirement Thrift Investment Board

"(a) There is established in the Executive branch of the Government a Federal Retirement Thrift Investment Board.

"(b) The Board shall be composed of—

"(1) 3 members appointed by the President, of whom 1 shall be designated by the President as Chairman; and

"(2) 2 members appointed by the President, of whom—

"(A) 1 shall be appointed by the President after taking into consideration the recommendation made by the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives; and

"(B) 1 shall be appointed by the President after taking into consideration the recommendation made by the majority leader of the Senate in consultation with the minority leader of the Senate.

"(c) Except as provided in section 311 of the Federal Employees' Retirement System Act of 1986, appointments under subsection (a) shall be made by and with the advice and consent of the Senate.

"(d) Members of the Board shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

"(e)(1) Except as provided in section 311 of the Federal Employees' Retirement System Act of 1986, a member of the Board shall be appointed for a term of 4 years, except that of the members first appointed (other than the members appointed under such section)—

"(A) the Chairman shall be appointed for a term of 4 years;

"(B) the members appointed under subsection (b)(2) shall be appointed for terms of 3 years; and

"(C) the remaining members shall be appointed for terms of 2 years.

"(2)(A) A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

"(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(3) The term of any member shall not expire before the date on which the member's successor takes office.

"(f) The Board shall—

"(1) establish policies for—

"(A) the investment and management of the Thrift Savings Fund; and

"(B) the administration of subchapter III of this chapter;

"(2) review the performance of investments made for the Thrift Savings Fund; and

"(3) review and approve the budget of the Board.

"(g)(1) The Board may—

"(A) adopt, alter, and use a seal;

"(B) except as provided in paragraph (2), direct the Executive Director to take such action as the Board considers appropriate to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

"(C) upon the concurring votes of four members, remove the Executive Director from office for good cause shown; and

"(D) take such other actions as may be necessary to carry out the functions of the Board.

"(2) Except in the case of investments required by section 8438 of this title to be invested in securities of the Government, the Board may not direct the Executive Director to invest or to cause to be invested any sums in the Thrift Savings Fund in a specific asset or to dispose of or cause to be disposed of any specific asset of such Fund.

"(h) The members of the Board shall discharge their responsibilities solely in the interest of participants and beneficiaries under this subchapter and subchapter III of this chapter.

"§ 8473. Employee Thrift Advisory Council

"(a) The Board shall establish an Employee Thrift Advisory Council. The Council shall be composed of 14 members appointed by the Chairman of the Board in accordance with subsection (b).

"(b) The Chairman shall appoint 14 members of the Council, of whom—

"(1) 4 shall be appointed to represent the respective labor organizations representing (as exclusive representatives) the first, second, third, and fourth largest numbers of individuals subject to chapter 71 of this title;

"(2) 2 shall be appointed to represent the respective labor organizations which have been accorded exclusive recognition under section 1203(a) of title 39 representing the largest and second largest numbers of individuals employed by the United States Postal Service;

"(3) 1 shall be appointed to represent the labor organization which has been accorded exclusive recognition under section 1203(a) of title 39 representing the largest number of individuals employed by the United States Postal Service as rural letter carriers;

"(4) 2 shall be appointed to represent the respective managerial organizations (other than an organization described in paragraph (5)) which consult with the United States Postal Service under section 1004(b) of title 39 and which represent the largest and second largest numbers of individuals employed by the United States Postal Service as managerial personnel;

"(5) 1 shall be appointed to represent the supervisors' organization as defined in section 1004(h) of title 39;

"(6) 1 shall be appointed to represent employee organizations having as a purpose promoting the interests of women in Government service;

"(7) 1 shall be appointed to represent the organization representing the largest number of individuals receiving annuities under this chapter or chapter 83 of this title;

"(8) 1 shall be appointed to represent the organization representing the largest number of individuals subject to the Performance Management and Recognition System under chapter 54 of this title; and

"(9) 1 shall be appointed to represent the organization representing the largest number of members of the Senior Executive Service.

"(c)(1) The Chairman of the Board shall designate 1 member of the Council to serve as head of the Council.

"(2) A member of the Council shall be appointed for a term of 4 years.

"(3)(A) A vacancy in the Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

"(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(C) The term of any member shall not expire before the date on which the member's successor takes office.

"(d) The Council shall act by resolution of a majority of the members.

"(e) The Council shall—

"(1) advise the Board and the Executive Director on matters relating to—

"(A) investment policies for the Thrift Savings Fund; and

"(B) the administration of this subchapter and subchapter III of this chapter; and

"(2) perform such other duties as the Board may direct with respect to investment funds established in accordance with subchapter III of this chapter.

"(f) Section 14(a)(2) of the Federal Advisory Committee Act shall not apply to the Council.

"§ 8474. Executive Director

"(a)(1) The Board shall appoint, without regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board.

"(2) The Executive Director shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

"(b) The Executive Director shall—

"(1) carry out the policies established by the Board;

"(2) invest and manage the Thrift Savings Fund in accordance with the investment policies and other policies established by the Board;

"(3) purchase annuity contracts and provide for the payment of other benefits under subchapter III of this chapter;

"(4) administer the provisions of this subchapter and subchapter III of this chapter;

"(5) prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this subchapter and subchapter III of this chapter; and

"(6) meet from time to time with the Council upon request of the Council.

"(c) The Executive Director may—

"(1) prescribe such regulations as may be necessary to carry out the responsibilities of the Executive Director under this section, other than regulations relating to fiduciary responsibilities;

"(2) appoint such personnel as may be necessary to carry out the provisions of this subchapter and subchapter III of this chapter;

"(3) subject to approval by the Board, procure the services of experts and consultants under section 3109 of this title;

"(4) secure directly from an Executive agency, the United States Postal Service, or the Postal Rate Commission any information necessary to carry out the provisions of this subchapter or subchapter III of this chapter and policies of the Board;

"(5) make such payments out of sums in the Thrift Savings Fund as the Executive Director determines are necessary to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

"(6) pay the compensation, per diem, and travel expenses of individuals appointed under paragraphs (2), (3), and (7) of this subsection from the Thrift Savings Fund;

"(7) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses, as authorized by section 5703 of this title, including per diem as authorized by section 5702 of this title;

"(8) except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate; and

"(9) take such other actions as are appropriate to carry out the functions of the Executive Director.

"§ 8475. Investment policies

"The Board shall develop investment policies under section 8472(f)(1) of this title which provide for—

"(1) prudent investments suitable for accumulating funds for payment of retirement income; and

"(2) low administrative costs.

"§ 8476. Administrative provisions

"(a) The Board shall meet—

"(1) not less than once during each month; and

"(2) at additional times at the call of the Chairman.

"(b)(1) Except as provided in sections 8472(g)(1)(C) and 8474(a)(1) of this title, the Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board.

"(2) A vacancy on the Board shall not impair the authority of a quorum of the Board to perform the functions and exercise the powers of the Board.

"(c) Three members of the Board shall constitute a quorum for the transaction of business.

"(d)(1) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for grade GS-18 of the General Schedule for each day

during which such member is engaged in performing a function of the Board.

"(2) A member of the Board shall be paid travel, per diem, and other necessary expenses under subchapter I of chapter 57 of this title while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

"(3) Payments authorized under this subsection shall be paid from the Thrift Savings Fund.

"(e) The accrued annual leave of any employee who is a member of the Board or the Council shall not be charged for any time used in performing services for the Board or the Council.

"§ 8477. Fiduciary responsibilities; liability and penalties

"(a) For the purposes of this section—

"(1) the term 'account' is not limited by the definition provided in section 8401(1);

"(2) the term 'adequate consideration' means—

"(A) in the case of a security for which there is a generally recognized market—

"(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934; or

"(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the Thrift Savings Fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and

"(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor;

"(3) the term 'fiduciary' means—

"(A) a member of the Board;

"(B) the Executive Director;

"(C) any person who has or exercises discretionary authority or discretionary control over the management or disposition of the assets of the Thrift Savings Fund; and

"(D) any person who, with respect to the Thrift Savings Fund, is described in section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(21)(A)); and

"(4) the term 'party in interest' includes—

"(A) any fiduciary;

"(B) any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary;

"(C) any participant;

"(D) any person providing services to the Board and, with respect to the actions of the Executive Director as a fiduciary any person providing services to the Executive Director;

"(E) a labor organization, the members of which are participants;

"(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);

"(G) a corporation, partnership, or trust or estate of which, or in which, at least 50 percent of—

"(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

"(ii) the capital interest or profits interest of such partnership; or

"(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by a person described in subparagraph (A), (B), (D), or (E);

"(H) an official (including a director) of, or an individual employed by, a person described in subparagraph (A), (B), (D), (E), or (G), or an individual having powers or responsibilities similar to those of such an official;

"(I) a holder (directly or indirectly) of at least 10 percent of the shares in a person described in any subparagraph referred to in subparagraph (H); and

"(J) a person who, directly or indirectly, is at least a 10 percent partner or joint venturer (measured in capital or profits) in a person described in any subparagraph referred to in subparagraph (H).

"(b)(1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of the participants and beneficiaries and—

"(A) for the exclusive purpose of—

"(i) providing benefits to participants and their beneficiaries; and

"(ii) defraying reasonable expenses of administering the Thrift Savings Fund or applicable portions thereof;

"(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives; and

"(C) to the extent permitted by section 8438 of this title, by diversifying the investments of the Thrift Savings Fund or applicable portions thereof so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

"(2) No fiduciary may maintain the indicia of ownership of any assets of the Thrift Savings Fund outside the jurisdiction of the district courts of the United States.

"(c)(1) A fiduciary shall not permit the Thrift Savings Fund to engage in any of the following transactions, except in exchange for adequate consideration:

"(A) A transfer of any assets of the Thrift Savings Fund to any person the fiduciary knows or should know to be a party in interest or the use of such assets by any such person.

"(B) An acquisition of any property from or sale of any property to the Thrift Savings Fund by any person the fiduciary knows or should know to be a party in interest.

"(C) A transfer or exchange of services between the Thrift Savings Fund and any person the fiduciary knows or should know to be a party in interest.

"(2) Notwithstanding paragraph (1), a fiduciary with respect to the Thrift Savings Fund shall not—

"(A) deal with any assets of the Thrift Savings Fund in his own interest or for his own account;

"(B) act, in an individual capacity or any other capacity, in any transaction involving the Thrift Savings Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Thrift Savings Fund or the interests of its participants or beneficiaries; or

"(C) receive any consideration for his own personal account from any party dealing with sums credited to the Thrift Savings Fund in connection with a transaction involving assets of the Thrift Savings Fund.

"(3)(A) The Secretary of Labor may, in accordance with procedures which the Secretary shall by regulation prescribe, grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by paragraph (2).

"(B) An exemption granted under this paragraph shall not relieve a fiduciary from any other applicable provision of this chapter.

"(C) The Secretary of Labor may not grant an exemption under this paragraph unless he finds that such exemption is—

"(i) administratively feasible;

"(ii) in the interests of the Thrift Savings Fund and of its participants and beneficiaries; and

"(iii) protective of the rights of participants and beneficiaries of such Fund.

"(D) An exemption under this paragraph may not be granted unless—

"(i) notice of the proposed exemption is published in the Federal Register;

"(ii) interested persons are given an opportunity to present views; and

"(iii) the Secretary of Labor affords an opportunity for a hearing and makes a determination on the record with respect to the respective requirements of clauses (i), (ii), and (iii) of subparagraph (C).

"(d) This section does not prohibit any fiduciary from—

"(1) receiving any benefit which the fiduciary is entitled to receive under this subchapter or subchapter III of this chapter as a participant or beneficiary;

"(2) receiving any reasonable compensation authorized by this subchapter for services rendered, or for reimbursement of expenses properly and actually incurred, in the performance of the fiduciary's duties under this chapter; or

"(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

"(e)(1)(A) Any fiduciary that breaches the responsibilities, duties, and obligations set out in subsection (b) or violates subsection (c) shall be personally liable to the Thrift Savings Fund for any losses to such Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and shall be subject to such other equitable or remedial relief as a court considers appropriate. A fiduciary may be removed for a breach referred to in the preceding sentence.

"(B) The Secretary of Labor may assess a civil penalty against a party in interest with respect to each transaction which is engaged in by the party in interest and is prohibited by subsection (c). The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1954) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary of Labor shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary of Labor transmits notice to the party in interest (or such longer period as the Secretary of Labor may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

"(C) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b) committed before becoming a fiduciary or after ceasing to be a fiduciary.

"(D) A fiduciary shall be jointly and severally liable under subparagraph (A) for a breach of fiduciary duty under subsection (b) by another fiduciary if—

"(i) the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is such a breach;

"(ii) by the fiduciary's failure to comply with subsection (b) in the administration of the fiduciary's specific responsibilities which give rise to the fiduciary status, the fiduciary has enabled such other fiduciary to commit such a breach; or

"(iii) the fiduciary has knowledge of a breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

"(E) The Secretary of Labor shall prescribe, in regulations, procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers. Any fiduciary who, pursuant to such procedures, allocates to a person or persons any fiduciary responsibility shall not be liable for an act or omission of such person or persons unless—

"(i) such fiduciary violated subsection (b) with respect to the allocation, with respect to the implementation of the procedures prescribed by the Board, or in continuing such allocation; or

"(ii) such fiduciary would otherwise be liable in accordance with subparagraph (D).

"(2) A civil action may be brought in the district courts of the United States—

"(A) by the Secretary of Labor—

"(i) to determine and enforce a liability under paragraph (1)(A);

"(ii) to collect any civil penalty under paragraph (1)(B); or

"(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

"(B) by the Secretary of Labor, any participant, beneficiary, or fiduciary—

"(i) to enjoin any act or practice which violates any provision of subsection (b) or (c); or

"(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

"(C) by any participant or beneficiary to recover benefits due to him or her under the provisions of subchapter III of this chapter, to enforce his or her rights under such provisions, or to clarify his or her rights to future benefits under such provisions.

"(3) An action may not be commenced under paragraph (2) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

"(A) 6 years after (i) the date of the last action which constituted a part of the breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

"(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.

"(4)(A) The district courts of the United States shall have exclusive jurisdiction of civil actions under this subsection.

"(B) An action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States in the district where the breach alleged in the complaint or petition filed in the action took place or in the district where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found.

"(5)(A) A copy of the complaint or petition filed in any action brought under this subsection (other than by the Secretary of Labor) shall be served on the Executive Director, the Secretary of Labor, and the Secretary of the Treasury by certified mail.

"(B) Any officer referred to in subparagraph (A) of this paragraph shall have the right in his discretion to intervene in any action. If the Secretary of Labor brings an action under paragraph (2) of this subsection on behalf of a participant or beneficiary, he shall notify the Executive Director and the Secretary of the Treasury.

"(f) The Secretary of Labor may prescribe regulations to carry out this section.

"(g)(1) The Secretary of Labor shall establish a program to carry out audits to determine the level of compliance with the requirements of this section relating to fiduciary responsibilities and prohibited activities of fiduciaries.

"(2) An audit under this subsection may be conducted by the Secretary of Labor, by contract with a qualified non-governmental orga-

nization, or in cooperation with the Comptroller General of the United States, as the Secretary considers appropriate.

"§ 8478. Bonding

"(a)(1) Except as provided in paragraph (2), each fiduciary (other than a member of the Employee Thrift Advisory Council with respect to his duties as a member) and each person who handles funds or property of the Thrift Savings Fund shall be bonded as provided in this section.

"(2)(A) Bond shall not be required of a fiduciary (or of any officer or employee of such fiduciary) if such fiduciary—

"(i) is a corporation organized and doing business under the laws of the United States or of any State;

"(ii) is authorized under such laws to exercise trust powers or to conduct an insurance business;

"(iii) is subject to supervision or examination by Federal or State authority; and

"(iv) has at all times a combined capital and surplus in excess of such minimum amount (not less than $1,000,000) as the Secretary of Labor prescribes in regulations.

"(B) If—

"(i) a bank or other financial institution would, but for this subparagraph, not be required to be bonded under this section by reason of the application of the exception provided in subparagraph (A),

"(ii) the bank or financial institution is authorized to exercise trust powers, and

"(iii) the deposits of the bank or financial institution are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation,

such exception shall apply to such bank or financial institution only if the bank or institution meets bonding requirements under State law which the Secretary of Labor determines are at least equivalent to those imposed on banks by Federal law.

"(b)(1) The Secretary of Labor shall prescribe the amount of a bond under this section at the beginning of each fiscal year. Except as otherwise provided in this paragraph, such amount shall not be less than 10 percent of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary of Labor, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of $500,000.

"(2) For the purpose of prescribing the amount of a bond under paragraph (1), the amount of funds handled shall be determined by reference to the amount of the funds handled by the person, group, or class to be covered by such bond or by their predecessor or predecessors, if any, during the preceding fiscal year, or to the amount of funds to be handled during the current fiscal year by such person, group, or class, estimated as provided in regulations prescribed by the Secretary of Labor.

"(c) A bond required by subsection (a)—

"(1) shall include such terms and conditions as the Secretary of Labor considers necessary to protect the Thrift Savings Fund

against loss by reason of acts of fraud or dishonesty on the part of the bonded person directly or through connivance with others;

"(2) shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6; and

"(3) shall be in a form or of a type approved by the Secretary of Labor, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

"(d)(1) It shall be unlawful for any person to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Thrift Savings Fund without being bonded as required by this section.

"(2) It shall be unlawful for any fiduciary, or any other person having authority to direct the performance of functions described in paragraph (1), to permit any such function to be performed by any person to whom subsection (a) applies unless such person has met the requirements of such subsection.

"(e) Notwithstanding any other provision of law, any person who is required to be bonded as provided in subsection (a) shall be exempt from any other provision of law which would, but for this subsection, require such person to be bonded for the handling of the funds or other property of the Thrift Savings Fund.

"(f) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the provisions of this section, including exempting a person or class of persons from the requirements of this section.

"§ 8479. Exculpatory provisions; insurance

"(a) Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void.

"(b)(1) The Executive Director may require employing agencies to contribute an amount not to exceed 1 percent of the amount such agencies are required to contribute in accordance with section 8432(c) of this title to the Thrift Savings Fund.

"(2) The sums credited to the Thrift Savings Fund under paragraph (1) shall be available and may be used at the discretion of the Executive Director to purchase insurance to cover potential liability of persons who serve in a fiduciary capacity with respect to the Thrift Savings Fund, without regard to whether a policy of insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation.".

(b) CONFORMING AMENDMENT.—The table of chapters at the beginning of part III of title 5, United States Code, is amended by inserting after the item relating to chapter 83 the following new item:

"84. Federal Employees' Retirement System ..... 8401.".

TITLE II—OTHER AMENDMENTS TO TITLE 5 OF THE UNITED STATES CODE

SEC. 201. TREATMENT UNDER CIVIL SERVICE RETIREMENT SYSTEM OF CERTAIN INDIVIDUALS EXCLUDED FROM FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—(1) Section 8334 of title 5, United States Code, is amended by adding at the end thereof the following:

"(k)(1) Effective with respect to pay periods beginning after December 31, 1986, in administering this section in the case of an individual described in section 8402(b)(2) of this title—

"(A) the amount to be deducted and withheld by the employing agency shall be determined in accordance with paragraph (2) of this subsection instead of the first sentence of subsection (a)(1) of this section; and

"(B) the amount of the contribution under the second sentence of subsection (a)(1) of this section shall be the amount which would have been contributed under such sentence if this subsection had not been enacted.

"(2)(A) With respect to Federal wages of an employee or Member (or that portion thereof) not exceeding the contribution and benefit base during the calendar year involved, the appropriate amount to be deducted and withheld under this subsection is the amount by which—

"(i) the total deduction for those wages (or for that portion) exceeds;

"(ii) the OASDI contribution with respect to those wages (or that portion).

"(B) With respect to any portion of Federal wages of an employee or Member which exceed the contribution and benefit base during the calendar year involved, the appropriate amount to be deducted and withheld under this subsection is an amount equal to the total deduction for that portion.

"(C) For purposes of this paragraph—

"(i) the term 'Federal wages' means basic pay for service as an employee or Member, as the case may be;

"(ii) the term 'contribution and benefit base' means the contribution and benefit base in effect with respect to the period involved, as determined under section 230 of the Social Security Act;

"(iii) the term 'total deduction', as used with respect to any Federal wages (or portion thereof), means an amount equal to the amount of those wages (or of that portion), multiplied by the percentage which (but for this subsection) would apply under the first sentence of subsection (a)(1) with respect to the individual involved; and

"(iv) the term 'OASDI contribution', with respect to any income, means the amount of tax which may be imposed under section 3101(a) of the Internal Revenue Code of 1954 with respect to such income (determined without regard to any income which is not a part of Federal wages).

"(3) The amount of a deposit under subsection (c) of this section for any service with respect to which paragraph (1) of this subsection applies shall be equal to an amount determined based on the preceding provisions of this subsection, and shall include interest.".

(2) Such section 8334 is further amended—

(A) in paragraphs (1) and (2) of subsection (e), by striking out "or (j)" and inserting in lieu thereof "(j), or (k)";

(B) in subsection (f), by inserting "or (k)" after "subsection (a)"; and

(C) in subsection (h), by striking out "and (j)" and inserting in lieu thereof "(j), and (k)".

(b) OFFSET IN BENEFITS.—(1) Subchapter III of chapter 83 of title 5, United States Code, is amended by adding at the end thereof the following:

"§ 8349. Offset relating to certain benefits under the Social Security Act

"(a)(1) Notwithstanding any other provision of this subchapter, if an individual under section 8402(b)(2) is entitled, or would on proper application be entitled, to old-age insurance benefits under title II of the Social Security Act, the annuity otherwise payable to such individual shall be reduced under this subsection.

"(2) A reduction under this subsection commences beginning with the first month for which the individual both—

"(A) is entitled to an annuity under this subchapter; and

"(B) is entitled, or would on proper application be entitled, to old-age insurance benefits under title II of the Social Security Act.

"(3)(A)(i) Subject to clause (ii) and subparagraphs (B) and (C), the amount of a reduction under this subsection shall be equal to the difference between—

"(I) the old-age insurance benefit which would be payable to the individual for the month referred to in paragraph (2); and

"(II) the old-age insurance benefit which would be so payable, excluding all wages derived from Federal service of the individual, and assuming the individual were fully insured (as defined by section 214(a) of the Social Security Act).

"(ii) For purposes of this subsection, the amount of a benefit referred to in subclause (I) or (II) of clause (i) shall be determined without regard to subsections (b) through (l) of section 203 of the Social Security Act, and without regard to the requirement that an application for such benefit be filed.

"(B) A reduction under this subsection—

"(i) may not exceed an amount equal to the product of—

"(I) the old-age insurance benefit to which the individual is entitled (or would on proper application be entitled) for the month referred to in paragraph (2), determined without regard to subsections (b) through (l) of section 203 of the Social Security Act; and

"(II) a fraction, as determined under section 8421(b)(3) with respect to the individual, except that the reference to 'service' in subparagraph (A) of such section shall be considered to mean Federal service; and

"(ii) may not cause the annuity payment for an individual to be reduced below zero.

"(C) An amount computed under subclause (I) or (II) of subparagraph (A)(i), or under subparagraph (B)(i)(I), for purposes of determining the amount of a reduction under this subsection shall be adjusted under section 8340 of this title.

"(4) A reduction under this subsection applies with respect to the annuity otherwise payable to such individual under this subchapter (other than under section 8337) for the month involved—

"(A) based on service of such individual; and

"(B) without regard to section 8345(j), if otherwise applicable.

"(5) The operation of the preceding paragraphs of this subsection shall not be considered for purposes of applying the provisions of the second sentence of section 215(a)(7)(B)(i) or the provisions of section 215(d)(5)(ii) of the Social Security Act in determining any amount under subclause (I) or (II) of paragraph (3)(A)(i) or paragraph (3)(B)(i)(I) for purposes of this subsection.

"(b)(1) Notwithstanding any other provision of this subchapter—

"(A) a disability annuity to which an individual described in section 8402(b)(2) is entitled under this subchapter, and

"(B) a survivor annuity to which a person is entitled under this subchapter based on the service of an individual described in section 8402(b)(2),

shall be subject to reduction under this subsection if that individual or person is also entitled (or would on proper application also be entitled) to any similar benefits under title II of the Social Security Act based on the wages and self-employment income of such individual described in section 8402(b)(2).

"(2)(A) Subject to subparagraph (B), reductions under this subsection shall be made in a manner consistent with the manner in which reductions under subsection (a) are computed and otherwise made.

"(B) Reductions under this subsection shall be discontinued if, or for so long as, entitlement to the similar benefits under title II of the Social Security Act (as referred to in paragraph (1)) is terminated (or, in the case of an individual who has not made proper application therefor, would be terminated).

"(3) For the purpose of applying section 224 of the Social Security Act to the disability insurance benefit used to compute the reduction under this subsection, the amount of the CSRS annuity considered shall be the amount of the CSRS annuity before application of this section.

"(4) The Office shall prescribe regulations to carry out this subsection.

"(c) For the purpose of this section, the term 'Federal service' means service which is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954 by reason of the amendments made by section 101 of the Social Security Amendments of 1983.".

(2) The analysis for chapter 83 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"8349. Offset relating to certain benefits under the Social Security Act.".

(c) CREDITABILITY OF INTERIM SERVICE.—Section 8334(c) of title 5, United States Code, is amended by adding at the end thereof the following: "Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in the case of an individual described in section 8402(b)(2) shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent.".

SEC. 202. NON-APPLICABILITY OF CIVIL SERVICE RETIREMENT SYSTEM TO INDIVIDUALS UNDER FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) EMPLOYEES.—Section 8331(1) of title 5, United States Code, is amended—

(1) by amending clause (ii) to read as follows:

"(ii) an employee subject to another retirement system for Government employees (other than an employee described in clause (x);";

(2) by striking "or" at the end of clause (viii);

(3) by striking the period at the end of clause (ix) and inserting in lieu thereof "; or"; and

(4) by adding after clause (ix) the following:

"(x) an employee subject to the Federal Employees' Retirement System.".

(b) MEMBERS OF CONGRESS.—Section 8331(2) of title 5, United States Code, is amended by striking the semicolon and inserting in lieu thereof ", but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System;".

SEC. 203. PAY FOR THE EXECUTIVE DIRECTOR OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD.

Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Executive Director, Federal Retirement Thrift Investment Board.".

SEC. 204. ALTERNATIVE FORMS OF ANNUITIES.

(a) IN GENERAL.—Title 5, United States Code, is amended by inserting after section 8343 the following:

"§ 8343a. Alternative forms of annuities

"(a) The Office of Personnel Management shall prescribe regulations under which an employee or Member may, at the time of retiring under this subchapter (other than under section 8337 of this title), elect annuity benefits under this section instead of any other benefits under this subchapter (including any benefits under section 8341 of this title) based on the service of the employee or Member.

"(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

"(1) an alternative which provides for—

"(A) payment of the lump-sum credit to the employee or Member; and

"(B) payment of an annuity to the employee or Member for life; and

"(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

"(A) payment of the lump-sum credit to the employee or Member; and

"(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

"(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)-(i) and (n) of section 8339 of this title.

"(d) An employee or Member who, at the time of retiring under this subchapter—

"(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8339(j)(1) of this title; or

"(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8341(h) or 8345(j) of this title (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

"(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8339(o) of this title, subject to the deposit requirement thereunder.".

(b) CONFORMING AMENDMENTS.—(1) The analysis for chapter 83 of title 5, United States Code, is amended by inserting after the item relating to section 8343 the following:

"8343a. Alternative forms of annuities.".

(2) The second sentence of section 8342(a) of title 5, United States Code, is amended by striking "The" and inserting in lieu thereof "Except as provided in section 8343a of this title, the".

SEC. 205. RETIREMENT COUNSELING.

(a) IN GENERAL.—Subchapter III of chapter 83 of title 5, United States Code, as amended by section 201(b), is further amended by adding at the end thereof the following:

"§ 8350. Retirement counseling

"(a) For the purposes of this section, the term 'retirement counselor', when used with respect to an agency, means an employee of the agency who is designated by the head of the agency to furnish information on benefits under this subchapter and chapter 84 of this

title and counseling services relating to such benefits to other employees of the agency.

"(b) The Director of the Office of Personnel Management shall establish a training program for all retirement counselors of agencies of the Federal Government.

"(c)(1) The training program established under subsection (b)(1) of this section shall provide for comprehensive training in the provisions and administration of this subchapter and chapter 84 of this title, shall be designed to promote fully informed retirement decisions by employees and Members under this subchapter and individuals subject to chapter 84 of this title, and shall be revised as necessary to assure that the information furnished to retirement counselors of agencies under the program is current.

"(2) The Director shall conduct a training session under the training program at least once every 3 months.

"(3) Once each year, each retirement counselor of an agency shall successfully complete a training session conducted under the training program.".

(b) CHAPTER ANALYSIS.—The chapter analysis at the beginning of such chapter is amended by inserting after the item relating to section 8349 the following:

"8350. Retirement counseling.".

SEC. 206. PARTICIPATION BY CERTAIN EMPLOYEES AND MEMBERS ONLY IN THE THRIFT SAVINGS PLAN.

(a)(1) Subchapter III of chapter 83 of title 5, United States Code (as amended by sections 201(b) and 205(a) of this Act), is amended by adding at the end thereof the following new section:

"§ 8351. Participation in the Thrift Savings Plan

"(a)(1) An employee or Member may elect to contribute to the Thrift Savings Fund established by section 8437 of this title.

"(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals who are subject to chapter 84 of this title.

"(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to employees and Members making contributions to the Thrift Savings Fund under subsection (a) of this section.

"(2) An employee or Member may contribute to the Thrift Savings Fund in any pay period any amount not exceeding 5 percent of the amount of the employee's or Member's basic pay for such period.

"(3) No contributions may be made by an employing agency for the benefit of an employee or Member under section 8432(c) of this title.

"(4) Section 8433(b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment entitled to an immediate annuity under this subchapter (including a disability retirement annuity under section 8337 of this title) or separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title.

"(5) Section 8433(c) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates entitled to a deferred annuity under this subchapter.

"(6) Section 8433(d) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from the service before becoming entitled to an immediate or deferred annuity under this subchapter.

"(7)(A) The provisions of section 8435 of this title that require a waiver or consent by the spouse of an employee or Member (or former employee or Member) shall not apply with respect to sums in the Thrift Savings Fund contributed by the employee or Member (or former employee or Member) and earnings in the fund attributable to such sums.

"(B) An election, change of election, or modification (relating to the commencement date of a deferred annuity) authorized by subchapter III of chapter 84 of this title shall be effective in the case of a married employee or Member, and a loan may be approved under section 8433(i) of this title in such case, only after the Executive Director notifies the employee's or Member's spouse that the election, change of election, or modification has been made or that the Executive Director has received an application for such loan, as the case may be.

"(C) Subparagraph (B) may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Executive Director of the Federal Retirement Thrift Investment Board that the whereabouts of such spouse or former spouse cannot be determined.

"(8) Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(c) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this section.".

(2) The analysis for chapter 83 of such title is amended by adding at the end thereof the following:

"8351. Participation in the Thrift Savings Plan.".

(b) An election may first be made by an employee of the Federal Government or a Member of Congress under section 8351 of title 5, United States Code (as added by subsection (a)(1)), during the first period referred to in subsection (a)(2) of such section which commences on or after July 1, 1987.

SEC. 207. MISCELLANEOUS AMENDMENTS.

(a) AMENDMENT TO SECTION 2105.—Section 2105(c)(2) of title 5, United States Code, is amended by striking out "chapter 81" and inserting in lieu thereof "chapter 81, chapter 84,".

(b) AMENDMENT TO SECTION 2109.—Section 2109(1) of title 5, United States Code, is amended to read as follows:

"(1) 'air traffic controller' or 'controller' means a civilian employee of the Department of Transportation or the Department of Defense who, in an air traffic control facility or flight service station facility—

"(A) is actively engaged—

"(i) in the separation and control of air traffic; or

"(ii) in providing preflight, inflight, or airport advisory service to aircraft operators; or

"(B) is the immediate supervisor of any employee described in subparagraph (A); and".

(c) AMENDMENT TO SECTION 6301.—Section 6301(2)(B) of title 5, United States Code, is amended to read as follows:

"(B) an individual first employed by the government of the District of Columbia before October 1, 1987;".

(d) AMENDMENT TO SECTION 6303.—The second sentence of section 6303(a) of title 5, United States Code, is amended by striking out "title." and inserting in lieu thereof "title and all service creditable under section 8411 of this title for the purpose of chapter 84 of this title.".

(e) AMENDMENT TO SECTION 8116.—Section 8116 of title 5, United States Code, is amended by adding at the end thereof the following:

"(d) Notwithstanding the other provisions of this section, an individual receiving benefits for disability or death under this subchapter who is also receiving benefits under subchapter III of chapter 84 of this title or benefits under title II of the Social Security Act shall be entitled to all such benefits, except that—

"(1) benefits received under section 223 of the Social Security Act (on account of disability) shall be subject to reduction on account of benefits paid under this subchapter pursuant to the provisions of section 224 of the Social Security Act; and

"(2) in the case of benefits received on account of age or death under title II of the Social Security Act, compensation payable under this subchapter based on the Federal service of an employee shall be reduced by the amount of any such social security benefits payable that are attributable to Federal service of that employee covered by chapter 84 of this title. However, eligibility for or receipt of benefits under chapter 84 of this title, or benefits under title II of the Social Security Act by virtue of service covered by chapter 84 of this title, does not affect the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.".

(f) AMENDMENTS TO SECTION 8331.—Section 8331(1) of title 5, United States Code, as amended by section 202(a), is further amended—

(1) by amending subparagraph (G) to read as follows:

"(G) an individual first employed by the government of the District of Columbia before October 1, 1987;"; and

(2) by striking out "or" at the end of clause (ix), by striking out the period at the end of clause (x) and inserting in lieu thereof "; or", and by adding after clause (x) the following:

"(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(l) of this title.".

(g) AMENDMENTS TO SECTION 8332.—(1) Section 8332(b) of title 5, United States Code, is amended—

(A) by striking "and" at the end of paragraph (12), striking the period at the end of the first paragraph (13) and inserting a semicolon, redesignating the second paragraph (13) as paragraph (14), and striking the period at the end of such paragraph (14) (as so redesignated) and inserting "; and";

(B) by inserting after paragraph (14) (as so redesignated by subparagraph (A)) the following:

"(15) subject to sections 8334(c) and 8339(i) of this title, service performed on or after January 3, 1969, and before January 4, 1973, as the Washington Representative for Guam or the Washington Representative for the Virgin Islands, only if the individual serves as a Member for a period of at least five years after January 2, 1973.";

(C) in the second sentence after paragraph (15) (as added by subparagraph (B)), by striking "(13)" and inserting "(14)"; and

(D) by adding at the end thereof the following: "For the purpose of this subchapter, service of the type described in paragraph (15) of this subsection shall be considered Member service.".

(2) The last sentence of section 8332(f) of title 5, United States Code, is amended by striking "(13)" and inserting "(14)".

(3) The last sentence of section 8332(k)(1) of title 5, United States Code, is amended by striking "second" and inserting "third".

(h) AMENDMENTS TO SECTION 8342.—Section 8342(a) of title 5, United States Code, is amended—

(1) in paragraphs (1)(B) and (3), by inserting ", or chapter 84 of this title," after "subchapter"; and

(2) by adding at the end the following: "In applying this subsection with respect to an employee or Member who becomes subject to chapter 84 of this title, entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986.".

(i) AMENDMENT TO SECTION 8347.—Section 8347 of title 5, United States Code, is amended by adding at the end thereof the following:

"(n)(1) Notwithstanding any other provision of this subchapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this subchapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

"(A) determine entitlement to benefits under this subchapter based on the service of employees of the Central Intelligence Agency;

"(B) maintain records relating to the service of such employees;

"(C) compute benefits under this subchapter based on the service of such employees;

"(D) collect deposits to the Fund made by such employees, their spouses, and their former spouses;

"(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

"(F) perform such other functions under this subchapter as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

"(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1) of this subsection.

"(3)(A) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, shall by regulation prescribe appropriate procedures to carry out this subsection.

"(B) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Civil Service Retirement and Disability Fund under this subchapter.

"(C) The Director of Central Intelligence shall submit the regulations prescribed under subparagraph (A) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

"(4)(A) Section 201(c) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees shall apply in the administration of this subchapter to the extent that the provisions of this subchapter are administered under this subsection.

"(B) Notwithstanding subparagraph (A) of this paragraph, section 8347(d) of this title shall apply with respect to employees of the Central Intelligence Agency who are subject to the Civil Service Retirement System.".

(j) AMENDMENTS TO SECTION 8348.—Section 8348(a) of title 5, United States Code, is amended—

(1) in paragraph (1)(A), by striking out "subchapter;" and inserting in lieu thereof "subchapter or by the provisions of chapter 84 of this title which relate to benefits payable out of the Fund;";

(2) in paragraph (1)(B)—

(A) by inserting "or 8462" after "8340"; and

(B) by striking out "title, and" and inserting in lieu thereof "title or subchapters II and IV of chapter 84 of this title, and"; and

(3) in paragraph (2), by striking out "chapter" and inserting in lieu thereof "chapter, chapter 84 of this title,".

(k) AMENDMENTS TO CHAPTER 87.—Chapter 87 of title 5, United States Code, is amended—

(1) by amending section 8701(a)(6) to read as follows:

"(6) an individual first employed by the government of the District of Columbia before October 1, 1987;";

(2) in section 8706, by striking out subsection (c) and redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively;

(3) by striking out subsection (c)(1) of section 8714a and inserting in lieu thereof the following:

"(c)(1) Except as otherwise provided in this subsection, the optional insurance on an employee stops on his separation from service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office.";

(4) by striking out the first sentence of section 8714b(c)(1) and inserting in lieu thereof the following: "Except as otherwise provided in this subsection, the additional optional insurance elected by an employee pursuant to this section shall stop on separation from service or 12 months after discontinuance of

his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office."; and

(5) by striking out subsection (c)(1) of section 8714c and inserting in lieu thereof the following:

"(c)(1) Except as otherwise provided in this subsection, the optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, or 12 months after discontinuance of pay, subject to a provision for temporary extension of life insurance coverage and for conversion to individual policies of life insurance under conditions approved by the Office.".

(l) AMENDMENTS TO SECTION 8901.—Section 8901 of title 5, United States Code, is amended—

(1) by amending paragraph (1)(E) to read as follows:

"(E) an individual first employed by the government of the District of Columbia before October 1, 1987;";

(2) by amending paragraph (3)(A) to read as follows:

"(A) an employee who retires—

"(i) on an immediate annuity under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, after 5 or more years of service;

"(ii) under section 8412 or 8414 of this title; or

"(iii) for disability under subchapter III of chapter 83 of this title, chapter 84 of this title, or another retirement system for employees of the Government;";

(3) in paragraph (4), by inserting "or chapter 84" after "83";

(4) in paragraph (10)(C)(i), by inserting "or 8467" after "8345(j)", by inserting "or 8445" after "8341(h)", and by striking out "System)," and inserting in lieu thereof "System or the Federal Employees' Retirement System),"; and

(5) in paragraph (10)(C)(ii)—

(A) by striking out "or 8345(j)" and inserting in lieu thereof "8345(j), 8445, or 8467" and by striking out "System)" and inserting in lieu thereof "System or the Federal Employees' Retirement System)"; and

(B) by inserting "or 8417(b)" after "8339(j)(3)".

(m) AMENDMENTS TO SECTION 8905.—Section 8905(c)(1) of title 5, United States Code, is amended—

(1) in subparagraph (B), by inserting "or 8417(b)" after "8339(j)(3)"; and

(2) in the second sentence, by striking out "or 8345(j)" and inserting in lieu thereof "8345(j), 8445, or 8467".

(n) AMENDMENT TO SECTION 5102.—Section 5102(c)(14) of title 5, United States Code, is amended by inserting "(other than employees of the Federal Retirement Thrift Investment Management System appointed under section 8474(c)(2) of this title)" after "United States".

TITLE III—OTHER PROVISIONS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM AND THE CIVIL SERVICE RETIREMENT SYSTEM

SEC. 301. ELECTIONS.

(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1)(A) Any individual (other than an individual under subsection (b)) who, as of June 30, 1987, is employed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

(B) An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

(2)(A) Any individual who, after June 30, 1987, becomes reemployed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

(B) An election under this paragraph shall not be effective unless it is made during the six-month period beginning on the date on which reemployment commences.

(b) ELECTIONS FOR CERTAIN INDIVIDUALS SERVING CONTINUOUSLY SINCE DECEMBER 31, 1983.—The following rules shall apply in the case of any individual described in section 8402(b)(1) of title 5, United States Code:

(1) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, but is not subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the individual shall remain so subject to such subchapter unless the individual elects, after June 30, 1987, and before January 1, 1988—

(A) to become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; or

(B) to become subject to chapter 84 of such title.

An individual eligible to make an election under this paragraph may make the election described in subparagraph (A) or (B), but not both.

(2) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, and is also subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the individual—

(A) shall, as of January 1, 1987, become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; and

(B) may (during the six-month period described in subsection (a)(1)(B)) elect to become subject to chapter 84 of such title.

(3)(A)(i) If, as of December 31, 1986, the individual is not subject to subchapter III of chapter 83 of title 5, United States Code, the individual may, during the six-month period described in subsection (a)(1)(B), and if such individual has not since become subject to such subchapter pursuant to notification under section 8331(2) of such title, elect to become subject to chapter 84 of such title.

(ii) An individual who makes an election under this subparagraph ceases to be eligible to become subject to subchapter III of chapter 83 of title 5, United States Code, pursuant to notification under section 8331(2) of such title.

(B) Except as provided in subparagraph (A)(ii), nothing in this paragraph shall preclude an individual from becoming subject to subchapter III of chapter 83 of title 5, United States Code, pursuant to notification under section 8331(2) of such title. However, an individual who becomes subject to such subchapter pursuant to notification under such section 8331(2) after December 31, 1986, shall become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

(c) EFFECTIVE DATE; IRREVOCABILITY.—An election made under this section—

(1) shall take effect beginning with the first pay period beginning after the date of the election; and

(2) shall be irrevocable.

(d) CONDITION FOR MAKING AN ELECTION; EXTENSION TO SATISFY CONDITION.—(1) An election under this section to become subject to chapter 84 of title 5, United States Code, shall not be considered effective in the case of an individual having one or more former spouses, unless the election is made with the written consent of such former spouse (or each such former spouse, if there is more than one).

(2)(A) This subsection applies with respect to a former spouse who (based on the service of the individual involved) is entitled to benefits under section 8341(h) or 8345(j) of title 5, United States Code, under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office of Personnel Management has been duly notified.

(B) This subsection does not apply with respect to a former spouse who has ceased to be so entitled as a result of remarrying before age 55.

(3) The requirement under paragraph (1) shall be considered satisfied with respect to a former spouse if the individual seeking to make the election establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

(A) that the former spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the individual to seek the former spouse's consent would otherwise be inappropriate.

(4)(A) The Office shall, upon application of an individual, grant an extension for such individual to make an election referred to in paragraph (1) if such individual—

(i) files application for extension before the end of the period during which such individual would otherwise be eligible to make such election; and

(ii) demonstrates to the satisfaction of the Office that the extension is needed to secure the modification of a decree of divorce or annulment (or a court order or court-approved property settlement incident to any such decree) in order to satisfy the consent requirement under paragraph (1).

(B) An extension under this paragraph shall be for 6 months or for such longer period as the Office considers appropriate.

(e) EXCLUSIONS.—This section does not apply to an individual under section 8331(1)(G) of title 5, United States Code.

SEC. 302. EFFECT OF AN ELECTION UNDER SECTION 301 TO BECOME SUBJECT TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) GENERAL AND SPECIAL RULES.—All provisions of chapter 84 of title 5, United States Code (including those relating to disability benefits, survivor benefits, and any reductions to provide for survivor benefits) shall apply with respect to any individual who becomes subject to such chapter pursuant to an election under section 301, except if, or to the extent that, such provisions are inconsistent with the following:

(1)(A) Any civilian service which is performed before the effective date of the election under section 301 shall not be creditable under chapter 84 of title 5, United States Code, except as otherwise provided in this subsection.

(B) Any service described in subparagraph (A) which is covered service within the meaning of section 203(a)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note) (hereinafter in this section referred to as "covered service") shall be creditable under chapter 84 of title 5, United States Code, if—

(i) with respect to any such service performed before January 1, 1987, 1.3 percent of basic pay for such service was withheld in accordance with such Act or, if either such withholding was not made or was made, but the amount so withheld was subsequently refunded, 1.3 percent of basic pay for such period is deposited to the credit of the Civil Service Retirement and Disability Fund (hereinafter in this section referred to as the "Fund"), with interest (computed under section 8334(e) of such title); and

(ii) with respect to any such service performed after December 31, 1986, and before the effective date of the election, an amount equal to the percentage of basic pay for such service which would be required to be withheld under section 8422(a) of title 5, United States Code, has been contributed to the Fund by the individual involved, whether by withholdings from pay or, if either no withholding was

made or was made, but the amount withheld was subsequently refunded, the aforementioned percentage of basic pay for such period is deposited to the credit of the Fund, with interest (computed under section 8334(e) of such title).

(C) Any service described in subparagraph (A)—

(i) which is not covered service;

(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

(iii) which, in the aggregate, is equal to less than 5 years; shall be creditable under chapter 84 of such title, subject to section 8411(f) of such title.

(D) Any service described in subparagraph (A)—

(i) which is not covered service;

(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

(iii) which, in the aggregate, is equal to 5 years or more; shall be creditable for purposes of—

(I) section 8410 of such title, relating to the minimum period of civilian service required to be eligible for an annuity;

(II) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, 8414, 8442(b)(1)(B), or 8451 of such title which relates to a minimum period of service for entitlement to an annuity;

(III) the provisions of paragraphs (4) and (6);

(IV) any provision of section 8412(d) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as a law enforcement officer or firefighter; and

(V) any provision of section 8412(e) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as an air traffic controller.

(2)(A) Except as provided in subparagraph (B), the creditability under chapter 84 of title 5, United States Code, of any military service which is performed before the effective date of the election under section 301 shall be determined in accordance with applicable provisions of such chapter.

(B) If the electing individual has performed service described in clauses (i) through (iii) of paragraph (1)(D), service described in subparagraph (A) which, but for the provisions of subsection (b), would be creditable under subchapter III of chapter 83 of title 5, United States Code, as in effect on December 31, 1986, shall be creditable for purposes of—

(i) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, or 8414 of such title which relates to a

minimum period of service for entitlement to an annuity; and

(ii) the provisions of paragraph (4).

(3)(A)(i) If the electing individual becomes entitled to an annuity under subchapter II of chapter 84 of title 5, United States Code, or dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, the annuity for such individual shall be equal to the sum of the individual's accrued benefits under the Civil Service Retirement System (as determined under paragraph (4)) and the individual's accrued benefits under the Federal Employees' Retirement System (as determined under paragraph (5)).

(ii) An annuity computed under this subparagraph shall be deemed to be the individual's annuity computed under section 8415 of title 5, United States Code.

(B) If the electing individual becomes entitled to an annuity under subchapter V of chapter 84 of title 5, United States Code, and if it becomes necessary to compute an annuity under section 8415 of such title with respect to such individual as a result of such individual's having become so entitled, the methodology set forth in subparagraph (A) shall be used in computing any such annuity under section 8415.

(4) Except as provided in paragraph (12)(B), accrued benefits under this paragraph shall be computed in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter.

(5) Accrued benefits under this paragraph shall be computed under section 8415 of title 5, United States Code, using—

(A) total service creditable under chapter 84 of such title which is performed on or after the effective date of the election under section 301; and

(B) with respect to service performed before such effective date—

(i) creditable civilian service (as determined under applicable provisions of this subsection) other than any service described in paragraph (1)(D); and

(ii) creditable military service (as determined under applicable provisions of this subsection) other than any service described in paragraph (2)(B).

(6)(A) For purposes of any computation under paragraph (4) or (5), the average pay to be used shall be the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of service so creditable, with each rate weighted by the period it was in effect.

(B) For purposes of subparagraph (A), service shall be considered creditable if it would be considered creditable for purposes

of determining average pay under chapter 83 or 84 of title 5, United States Code.

(7) The cost-of-living adjustments for the annuity of the electing individual shall be made as follows:

(A) The portion of the annuity attributable to paragraph (4) shall be adjusted at the time and in the amount provided for under section 8340 of title 5, United States Code.

(B) The portion of the annuity attributable to paragraph (5) shall be adjusted at the time and in the amount provided for under section 8462 of title 5, United States Code.

(8) For purposes of any computation under paragraph (4) in the case of an individual who retires under section 8412 or 8414 of title 5, United States Code, or who dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, sick leave creditable under section 8339(m) of such title shall be equal to the number of days of unused sick leave to the individual's credit as of the date of retirement or as of the effective date of the individual's election under section 301, whichever is less.

(9) In computing the annuity under paragraph (3) for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, the reduction under section 8415(f) of such title shall apply with respect to the sum computed under such paragraph.

(10) An annuity supplement under section 8421 of title 5, United States Code, shall be computed using the same service as is used for the computation under paragraph (5).

(11) Effective from its commencing date, an annuity payable to an annuitant's survivor (other than a child under section 8443 of title 5, United States Code) shall be increased by the total percent by which the deceased annuitant's annuity was increased under paragraph (7).

(12)(A) If the electing individual is subject to section 8344 of title 5, United States Code, at the time of making the election, payment of annuity benefits otherwise payable to such individual under subchapter III of chapter 83 of such title (and any related deductions from pay) shall terminate as of the effective date of the election.

(B) Accrued benefits under paragraph (4) for an individual described in subparagraph (A) shall be computed—

(i) in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter; and

(ii) as if the individual's reemployment terminated on the effective date of the election.

(b) CHAPTER 83 GENERALLY INAPPLICABLE.—(1) Except as provided in subsection (a) or paragraph (2), subchapter III of chapter 83 of title 5, United States Code, shall not apply with respect to any individual who becomes subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301.

(2) Nothing in paragraph (1), or in subchapter III of chapter 83 of title 5, United States Code, shall preclude—

(A) the making of a deposit under such subchapter with respect to any civilian service under subsection (a)(1)(D) or military service under subsection (a)(2)(B) either by the electing individual or, for purposes of survivor annuities, by a survivor of such individual.

(B) Nothing in paragraph (1) shall preclude the payment of any lump-sum credit in accordance with section 8342 of title 5, United States Code.

(c) REFUNDS RELATING TO CERTAIN CIVILIAN SERVICE.—(1) Any individual who makes an election under section 301 to become subject to chapter 84 and who, with respect to any period before the effective date of the election, has made a contribution to the Civil Service Retirement System (whether by deductions from pay or by a deposit or redeposit) and has not taken a refund of the contribution (as so made), shall be entitled to a refund equal to—

(A) for a period of service under clause (i) of subsection (a)(1)(B), the amount by which—

(i) the amount contributed with respect to such period, exceeds

(ii) the amount required under such clause (i) with respect to such period;

(B) for a period of service under clause (ii) of subsection (a)(1)(B), the amount by which—

(i) the amount so contributed with respect to such period, exceeds

(ii) the amount required under such clause (ii) with respect to such period; and

(C) for a period of service under subparagraph (C) of subsection (a)(1), the amount by which—

(i) the amount so contributed with respect to such period, exceeds

(ii) the amount required under such subparagraph with respect to such period.

(2) A refund under this subsection—

(A) shall be payable with interest, computed at the rate applicable for the period involved under section 8331(8)(C) of title 5, United States Code, but only if such interest would be payable pursuant to an application for a lump-sum credit appropriately filed under subchapter III of chapter 83 of such title; and

(B) shall be payable upon written application therefor filed with the Office of Personnel Management.

SEC. 303. PROVISIONS RELATING TO AN ELECTION TO BECOME SUBJECT TO CHAPTER 83 SUBJECT TO CERTAIN OFFSETS RELATING TO SOCIAL SECURITY.

(a) REFUND.—Any individual who makes an election under section 301(b)(1)(A) shall, upon written application to the Office of Personnel Management, be entitled to a refund equal to—

(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, the amount by which—

(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for such period, exceeds

(B) 1.3 percent of such individual's total basic pay for such period; and

(2) for the period beginning on January 1, 1987, and ending on the day before the effective date of the election, the amount by which—

(A) the total amount deducted from such individual's basic pay under such section 8334(a)(1) for such period, exceeds

(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of such title during such period.

(b) DEPOSIT REQUIREMENTS.—(1) In the case of an individual who becomes subject to subchapter III of chapter 83 of title 5, United States Code, pursuant to notification as described in the second sentence of section 301(b)(3)(B), service performed by such individual before the effective date of the notification shall not be considered creditable under such subchapter unless—

(A) for any service during the period beginning on January 1, 1987, and ending on the day before such effective date, there is deposited to the credit of the Fund a percentage of basic pay for such period equal to the percentage which would have applied under section 8334(k) of such title if such individual's pay had been subject to such section during such period;

(B) for any period of service beginning on January 1, 1984, and ending on December 31, 1986, there is deposited to the credit of the Fund an amount equal to 1.3 percent of basic pay for such period; and

(C) for any period of service before January 1, 1984, there is deposited to the credit of the Fund any amount required with respect to such period under such subchapter.

(2) A deposit under this subsection may be made by the individual or, for purposes of survivor annuities, a survivor of such individual.

SEC. 304. AMENDMENTS RELATING TO SOCIAL SECURITY.

(a) AMENDMENTS TO SOCIAL SECURITY ACT.—Section 210(a)(5) of the Social Security Act is amended—

(1) by striking out "or" at the end of subparagraph (F);

(2) by striking out the semicolon at the end of subparagraph (G) and inserting in lieu thereof ", or"; and

(3) by adding at the end thereof the following:

"(H) service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees' Retirement System Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5, United States Code;".

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954.—Section 3121(b)(5) of the Internal Revenue Code of 1954 is amended—

(1) by striking out "or" at the end of subparagraph (F);

(2) by striking out the semicolon at the end of subparagraph (G) and inserting in lieu thereof ", or"; and

(3) by adding at the end thereof the following:

"(H) service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees' Retirement System

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Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5, United States Code;".

SEC. 305. EXTENSION OF FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983; REFUND OF EXCESS CONTRIBUTIONS.

(a) EXTENSION.—The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1106; 5 U.S.C. 8331 note) is amended—

(1) in sections 202(6), 203(a)(4)(A), 203(a)(4)(B), 204(a), and 206(b)(2)(A)(i) by striking "May 1, 1986" each place it appears and inserting "January 1, 1987", and in sections 202(1) and 206(c)(3) by striking "January 1, 1986" and inserting "January 1, 1987"; and

(2) in subsections (b) and (c) of section 205, by striking out "and 1986" and inserting in lieu thereof "1986, and 1987".

(b) REFUNDS.—(1) The amendments made by subsection (a) shall be effective as of May 1, 1986.

(2) Any refund payable to an individual as a result of paragraph (1) shall be paid out of funds of the appropriate retirement system.

(3) For purposes of this subsection, the term "retirement system" means a covered retirement system as defined by section 203(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note).

SEC. 306. APPLICABILITY TO THE UNITED STATES POSTAL SERVICE.

Section 1005(d) of title 39, United States Code, is amended to read as follows:

"(d) Officers and employees of the Postal Service (other than the Governors) shall be covered by chapters 83 and 84 of title 5. The Postal Service shall withhold from pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in or determined under such chapter 83 and subchapter II of such chapter 84, respectively. The Postal Service shall pay into the Federal Retirement Thrift Savings Fund the amounts specified in or determined under subchapters III and VII of such chapter 84.".

SEC. 307. USE OF "NORMAL-COST PERCENTAGE".

Notwithstanding any other provision of law, the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code, as added by this Act) of the Federal Employees' Retirement System shall be used to value the cost of the System for all purposes in which the cost of the System is required to be determined by the Federal Government, including any comparisons between the cost of performing commercial activities under contract with commercial sources and the cost of performing those activities using Government facilities and personnel.

SEC. 308. RETIREMENT STUDY.

(a) STUDY AND PLAN.—The Secretary of Defense and Secretary of Transportation shall conduct a study of the retirement systems provided for employees of nonappropriated fund instrumentalities of the United States under their respective jurisdictions and shall develop a feasible plan or plans to provide portability of vested retirement benefits among such retirement systems and other Federal Government retirement systems.

(b) REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense and Secretary of Transportation shall transmit a report to the Congress describing the plan or plans developed pursuant to subsection (a) and the anticipated schedule for the implementation of such plan or plans.

SEC. 309. REPEAL OF AUTOMATIC TRANSFER PROVISION.

Section 207 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111; 5 U.S.C. 8331 note) is repealed.

SEC. 310. DISCLOSURE OF RETURN INFORMATION.

(a) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1954 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end thereof the following new paragraph:

"(12) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—

"(A) IN GENERAL.—The Commissioner of Social Security shall, on written request, disclose to the Office of Personnel Management return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5).

"(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, the administration of chapters 83 and 84 of title 5, United States Code."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6103(p)(3) of such Code is amended by striking out "(10), or (11)" and inserting in lieu thereof "(10), (11), or (12)".

(2) Paragraph (4) of section 6103(p) of such Code is amended—

(A) by striking out "(10), or (11)" in the material preceding subparagraph (A) and inserting in lieu thereof "(10), (11), or (12)", and

(B) by striking out "(10), or (11)" in subparagraph (F)(ii) and inserting in lieu thereof "(10), (11), or (12)".

(c) REIMBURSEMENT.—The Office of Personnel Management shall reimburse the costs (as determined by the Secretary of Health and Human Services) of supplying—

(1) information under section 6103(l)(12) of the Internal Revenue Code of 1954; and

(2) such other information agreed upon by the Director of the Office of Personnel Management and the Secretary of Health and Human Services, which is required in the administration of chapters 83 and 84 of title 5, United States Code.

Section 1106 (b) and (c) of the Social Security Act shall apply to any reimbursement under this subsection.

SEC. 311. INITIAL APPOINTMENTS TO THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD.

(a) INITIAL APPOINTMENT OF MEMBERS.—Section 8472(c) of title 5, United States Code (as added by section 101(a) of this Act) shall not apply to the members of the Federal Retirement Thrift Investment Board first appointed to such Board.

(b) TERMS OF SERVICE.—Notwithstanding subsection (e)(1) of section 8472 of title 5, United States Code (as added by section 101(a) of this Act), the term of service of each member of the Federal Retirement Thrift Investment Board appointed pursuant to subsection (a) shall be 1 year, except that such member shall continue to serve until his successor is appointed under subsection (b) of such section 8472 and confirmed under subsection (c) of such section.

SEC. 312. PLAN FOR DELAYED CONTRIBUTIONS TO THE THRIFT SAVINGS FUND.

Not later than January 1, 1988, the Executive Director of the Federal Retirement Thrift Investment Board shall transmit to Congress a plan to afford employees of the Federal Government and Members of Congress who make less than the maximum amount of authorized contributions to the Thrift Savings Fund in any period an opportunity to contribute to such Fund, in a later period, the excess of such amount over the amount contributed during such period. The plan shall include such recommendations for legislation as the Executive Director considers appropriate.

TITLE IV—FOREIGN SERVICE RETIREMENT

SEC. 401. SHORT TITLE; REFERENCES TO FOREIGN SERVICE ACT OF 1980.

(a) SHORT TITLE.—This title may be cited as the "Foreign Service Pension System Act of 1986".

(b) AMENDMENTS TO FOREIGN SERVICE ACT OF 1980.—Whenever in this title a section or other provision is amended, such amendment shall be considered to be made to that section or other provision of the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.).

SEC. 402. REDESIGNATION OF CERTAIN PROVISIONS OF THE FOREIGN SERVICE ACT OF 1980.

(a) CONFORMING CHAPTER AMENDMENTS.—Chapter 8 of title I (22 U.S.C. 4041 et seq.) is amended—

(1) by striking out the caption of such chapter and inserting in lieu thereof the following:

"CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY

"SUBCHAPTER I—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM"

(2) by striking out "this chapter" each place it appears and inserting in lieu thereof "this subchapter"; and

(3) by inserting "under this subchapter" after "payable from the Fund" each place it appears.

(b) CONFORMING AMENDMENTS RELATING TO RETIREMENT FOR DISABILITY OR INCAPACITY.—(1) Section 808(d) (22 U.S.C. 4048(d)) is amended—

(A) by striking out "such subchapter" each place it appears in the second and third sentences and inserting in lieu thereof "subchapter I of such chapter 8"; and

(B) by striking out "Act" each place it appears and inserting in lieu thereof "subchapter".

(2) Section 808(e) (22 U.S.C. 4048(e)) is amended by striking out "Act" each place it appears and inserting in lieu thereof "subchapter".

(c) CONFORMING AMENDMENTS RELATING TO DEATH IN SERVICE.—Section 809(a) (22 U.S.C. 4049(a)) is amended by striking out "Act" and inserting in lieu thereof "subchapter".

SEC. 403. DEFINITION OF COURT.

Section 804(3) (22 U.S.C. 4044(3)) is amended by striking out "or of the District of Columbia" and inserting in lieu thereof the following: ", the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by section 201(3) of the Act entitled 'An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes', approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77)".

SEC. 404. CREDITABLE SERVICE FOR PURPOSES OF SUBCHAPTERS I AND II.

(a) PRO RATA SHARE.—Section 804(10) (22 U.S.C. 4044(10)) is amended by inserting "(creditable under subchapter I or II) after "creditable service" each place it appears.

(b) FORMER SPOUSES.—(1) Section 814(a)(1) (22 U.S.C. 4054(a)(1)) is amended by adding at the end thereof the following: "For the purposes of this paragraph, the term 'creditable service' means service which is creditable under subchapter I or II.".

(2) Section 814(b)(1) (22 U.S.C. 4054(b)(1)) is amended by adding at the end thereof the following: "For the purposes of this paragraph, the term 'creditable service' means service which is creditable under subchapter I or II.".

(c) LUMP-SUM PAYMENTS.—Section 815(i) (22 U.S.C. 4055(i)) is amended by adding at the end thereof the following: "For the purposes of this subsection, the term 'creditable service' means service which is creditable under subchapter I or II.".

SEC. 405. CONTRIBUTIONS TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.

(a) CONTRIBUTIONS AFTER DECEMBER 31, 1986.—Section 805 (22 U.S.C. 4045) is amended—

(1) by inserting "Except as provided in subsection (h)," before "7 percent" in the first sentence of subsection (a); and

(2) by adding at the end thereof the following new subsection (h):

"(h) Effective with respect to pay periods beginning after December 31, 1986, in administering this section with respect to a participant described in section 853(c) whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, contributions to the Fund and interest thereon shall be computed as if section 8334(k) of title 5, United States Code, were applicable.".

(b) CREDITABILITY OF INTERIM SERVICE.—Subsection (d) of section 805 (22 U.S.C. 4045(d)) is amended by adding at the end thereof the following:

"(4) Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in the case of a

participant described in section 853(c) shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent.".

SEC. 406. OFFSET OF ANNUITY BY THE AMOUNT OF SOCIAL SECURITY BENEFITS.

Section 806 (22 U.S.C. 4046) is amended by adding at the end thereof the following new subsection:

"(m) The annuity or survivor annuity payable to any individual subject to section 805(h) beginning with the first month for which such individual both—

"(1) attains the minimum age for old-age benefits under title II of the Social Security Act, and

"(2) first becomes entitled, or would upon proper application become entitled, for disability or survivor benefits under title II of the Social Security Act based on the service of any individual under this subchapter,

shall be computed as if section 8349 of title 5, United States Code, were applicable.".

SEC. 407. 18-MONTH PERIOD TO ELECT SURVIVOR ANNUITY.

Section 806 (22 U.S.C. 4046) is further amended by adding at the end thereof the following:

"(n)(1)(A) A participant—

"(i) who, at the time of retirement, is married; and

"(ii) who elects at such time (in accordance with subsection (b)) to waive a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a reduction under subsection (b) made in the annuity of the participant (or in such portion thereof as the participant may designate) in order to provide a survivor annuity for the spouse of such participant.

"(B) A participant—

"(i) who, at the time of retirement, is married, and

"(ii) who at such time designates (in accordance with subsection (b)) that a limited portion of the annuity of such participant is to be used as the base for a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a greater portion of the annuity of such participant so used.

"(2)(A) An election under subparagraph (A) or (B) of paragraph (1) of this subsection shall not be considered effective unless the amount specified in subparagraph (B) of this paragraph is deposited into the Fund before the expiration of the applicable 18-month period under paragraph (1).

"(B) The amount to be deposited with respect to an election under this subsection is an amount equal to the sum of—

"(i) the additional cost to the System which is associated with providing a survivor annuity under subsection (b) of this section and results from such election taking into account (I) the difference (for the period between the date on which the annuity of the former participant commences and the date of the election) between the amount paid to such former participant under this subchapter and the amount which would have been

paid if such election had been made at the time the participant or former participant applied for the annuity, and (II) the costs associated with providing the later election; and

"(ii) interest on the additional cost determined under clause (i)(I) of this subparagraph computed using the interest rate specified or determined under section 805(d)(3) for the calendar year in which the amount to be deposited is determined.

"(3) An election by a participant under this subsection voids prospectively any election previously made in the case of such participant under subsection (b).

"(4) An annuity which is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the participant whose annuity is so reduced.

"(5) Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations which would have resulted had the participant involved elected such annuity at the time of retiring.".

SEC. 408. ALTERNATE FORMS OF ANNUITIES.

Section 807 (22 U.S.C. 4047) is amended by adding at the end thereof the following:

"(e)(1) The Secretary of State shall prescribe regulations under which a participant may, at the time of retiring under this subchapter (other than under section 808), elect annuity benefits under this section instead of any other benefits under this subchapter (including survivor benefits) based on the service of the participant.

"(2) Subject to paragraph (3), the Secretary of State shall by regulation provide for such alternative forms of annuities as the Secretary considers appropriate, except that among the alternatives offered shall be—

"(A) an alternative which provides for—

"(i) payment of the lump-sum credit (excluding interest) to the participant; and

"(ii) payment of an annuity to the participant for life; and

"(B) in the case of a participant who is married at the time of retirement, an alternative which provides for—

"(i) payment of the lump-sum credit (excluding interest) to the participant; and

"(ii) payment of an annuity to the participant for life, with a survivor annuity payable for the life of a surviving spouse.

"(3) Each alternative provided for under paragraph (2) shall, to the extent practicable, be designed such that the total value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the value of the annuity which would otherwise be provided the participant under this subchapter, as computed under section 806(a).

"(4) A participant who, at the time of retiring under this subchapter—

"(A) is married, shall be ineligible to make an election under this section unless a waiver is made under section 806(b)(1)(B); or

"(B) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under this subchapter (based on the service of the participant) unless a waiver has been made under section 806(b)(1)(C).

"(5) A participant who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 806(n), subject to the deposit requirement thereunder.

"(6) Notwithstanding any other provision of law, any lump-sum credit provided pursuant to an election under this subsection shall not preclude an individual from receiving any other benefits under this subsection.".

SEC. 409. TREATMENT OF CERTAIN RECALL SERVICE.

Section 823 (22 U.S.C. 4063) is amended by adding at the end thereof the following:

"(c) If an annuitant becomes subject to subchapter II of this chapter by reason of recall service—

"(1) subsections (a) and (b) shall not apply to such annuitant; and

"(2) section 824 shall apply to the recall service as if such service were reemployment.".

SEC. 410. REEMPLOYMENT.

Section 824 (22 U.S.C. 4064) is amended to read as follows:

"SEC. 824. REEMPLOYMENT.—(a)(1)(A) Except in the case of an annuitant who makes an election under subsection (b), if any former participant, who has retired and is receiving an annuity under this subchapter or subchapter II of this chapter, becomes employed in an appointive or elective position in the Government, payment of any annuity under either subchapter to the annuitant shall terminate effective on the date of the employment and the reemployment service shall be covered service under the rules of the system under which the appointment is made.

"(B) If the annuity of an individual is terminated under subparagraph (A) and that individual becomes covered under the same retirement system from which that annuity is terminated, that individual shall be entitled to a redetermination of rights under that system upon termination of the employment.

"(C) If the annuity is terminated and the individual becomes covered under another contributory retirement system for Government employees pursuant to paragraph (A), the individual shall be entitled to benefits under the rules of that system. In addition, the individual shall be entitled to a resumption of any annuity terminated by reason of the employment.

"(b)(1) A participant who is entitled to an annuity under this subchapter or subchapter II of this chapter and becomes employed in an appointive or elective position in the Government on a part-time, intermittent, or temporary basis may elect to continue to receive either or both annuities as provided in this subsection.

"(2) The total annuity payable under this chapter to an annuitant making an election under paragraph (1) shall be reduced during the part-time, intermittent, or temporary employment referred to in

paragraph (1) as necessary to meet the requirements of paragraph (3).

"(3) The sum of—

"(A) the total annuity payable under this chapter to an annuitant making an election under paragraph (1), and

"(B) the annual rate of pay payable to the annuitant during the part-time, intermittent, or temporary employment referred to in paragraph (1),

may not exceed, in any calendar year, the highest annual rate of pay which is payable during such year for full-time employment in the position in which the annuitant is employed.

"(4) Upon termination of the part-time, intermittent, or temporary employment referred to in paragraph (1), payment of the full annuity of an annuitant who has made an election under paragraph (1) of this subsection shall resume.

"(c) The amount of annuity which has been terminated or reduced under this section by reason of the reemployment of the annuitant and is resumed under this section shall be the amount of the annuity which would have been payable if the annuitant had not accepted the reemployment. The amount of an annuity resulting from a redetermination of rights pursuant to subsection (a) shall not be less than the amount of an annuity resumed under the previous sentence.

"(d) The annuity rights of any participant who is reemployed in the Government shall be determined under this section instead of section 8468 of title 5, United States Code.

"(e) When any such retired participant is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such participant the salary of the position in which he or she is serving.

"(f) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed participant or from any other moneys, including annuity payments, payable under this chapter.".

SEC. 411. COMPARABILITY BETWEEN THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM AND THE FOREIGN SERVICE PENSION SYSTEM.

Section 827 (22 U.S.C. 4067) is amended by adding at the end thereof the following:

"(c) The President shall maintain, under the same conditions and in the same manner as provided in subsections (a) and (b) existing conformity between the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, and the Foreign Service Pension System provided in subchapter II of this chapter.".

SEC. 412. MODERATION OF REMARRIAGE PENALTY.

Chapter 8 of title I (22 U.S.C. 4041 et seq.) is further amended by adding after section 827 the following:

"SEC. 828. REMARRIAGE.—Notwithstanding any other provision of this subchapter, any benefit payable under this subchapter to a surviving spouse, former spouse, or surviving former spouse that would otherwise terminate or be lost if the individual remarried before 60 years of age, shall not terminate or be lost if the remarriage oc-

curred on or after November 8, 1984, and the individual was 55 years of age or over on the date of the remarriage.".

SEC. 413. LUMP-SUM PAYMENTS.

Subsection (a) of section 815 is amended by adding at the end thereof the following: "A participant who becomes subject to subchapter II shall be entitled to payment of the lump-sum credit if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986.".

SEC. 414. EXCLUSION OF PARTICIPANTS IN FOREIGN SERVICE PENSION SYSTEM FROM FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.

Section 803 is amended—

(1) in subsection (a), by striking out "The" and inserting in lieu thereof "Except as provided in subsection (d), the"; and

(2) by adding at the end thereof the following:

"(d) An individual subject to the Foreign Service Pension System (described in subchapter II) is not a participant in this System.".

SEC. 415. FOREIGN SERVICE PENSION SYSTEM.

Chapter 8 of title I (22 U.S.C. 4041 et seq.) is further amended by adding at the end thereof the following:

"SUBCHAPTER II—FOREIGN SERVICE PENSION SYSTEM

"SEC. 851. ESTABLISHMENT.—(a) There is hereby established a Foreign Service Pension System.

"(b) Except as otherwise specifically provided in this subchapter or any other provision of law, the provisions of chapter 84 of title 5, United States Code, shall apply to all participants in the Foreign Service Pension System and such participants shall be treated in all respects similar to persons whose participation in the Federal Employees' Retirement System provided in that chapter is required.

"SEC. 852. DEFINITIONS.—As used in this subchapter, unless otherwise specified—

"(1) the term 'court order' has the same meaning given in section 804(4);

"(2) the term 'Fund' means the Foreign Service Retirement and Disability Fund maintained by the Secretary of the Treasury pursuant to section 802;

"(3) the term 'normal cost' means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Secretary of State in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

"(4) the term 'participant' means a person who participates in the Foreign Service Pension System;

"(5) the term 'pro rata share' in the case of any former spouse of any participant or former participant means the percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the service of the participant which is creditable under this chapter is of (B) the total number of years of such service, disregarding extra credit under section 817;

"(6) the term 'supplemental liability' means the estimated excess of—

"(A) the actuarial present value of all future benefits payable from the Fund under this subchapter based on the service of participants or former participants, over

"(B) the sum of—

"(i) the actuarial present value of (I) deductions to be withheld from the future basic pay of participants pursuant to section 856 and (II) contributions for past civilian and military service;

"(ii) the actuarial present value of future contributions to be made pursuant to section 857;

"(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

"(I) to the System, or

"(II) to the contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (5 U.S.C. 8331 note); and

"(iv) any other appropriate amount, as determined by the Secretary of State in accordance with generally accepted actuarial practices and principles; and

"(7) the term 'System' means the Foreign Service Pension System.

"SEC. 853. PARTICIPANTS.—(a) Except for persons excluded by subsection (b), (c), or (d), all members of the Foreign Service, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, who would, but for this section, be participants in the Foreign Service Retirement and Disability System pursuant to section 803 shall instead be participants in the Foreign Service Pension System.

"(b) Members of the Service who were participants in the Foreign Service Retirement and Disability System on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not made participants in the System by this section, without regard to whether they are subject to title II of the Social Security Act.

"(c) Individuals who become members of the Service after having completed at least 5 years of civilian service creditable under subchapter I, subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (determined without regard to any deposit or redeposit requirement under any such subchapter or title, any requirement that the individual become subject to such subchapter or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter or title) are not participants in the System, except to the extent provided for under title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this subchapter (under regulations issued by the Secretary of State pursuant to section 860).

"(d) The Secretary may exclude from the operation of this subchapter any member of the Foreign Service, or group of members, whose employment is temporary or intermittent, except a member whose employment is part-time career appointment or career candidate appointment under section 306.

"SEC. 854. CREDITABLE SERVICE.—(a) For purposes of this subchapter, creditable service of a participant includes—

"(1) service as a participant after December 31, 1986;

"(2) service with respect to which deductions and withholdings under section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made; and

"(3) except as provided in subsection (b), any civilian service performed before January 1, 1989 (other than service under paragraph (1) or (2)), which, but for the amendment made by section 414 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter I (determined without regard to any deposit or redeposit requirement under such subchapter, subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, any requirement that the individual become subject to such subchapter or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter or title).

"(b)(1) A participant who has received a refund of retirement deductions under subchapter I with respect to any service described in subsection (a)(3) may not be allowed credit for such service under this subchapter unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

"(2) A participant may not be allowed credit under this subchapter for any service described in subsection (a)(3) for which retirement deductions under subchapter I have not been made, unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

"(3) Interest under paragraph (1) or (2) shall be computed in accordance with section 805(d) and regulations issued by the Secretary of State.

"(c) Credit shall be given under this System to a participant for a period of prior satisfactory service as—

"(1) a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.),

"(2) a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or

"(3) a full-time volunteer for a period of service of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.),

if the participant makes a payment to the Fund equal to 3 percent of pay received for the volunteer service (as determined in accordance with regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83,

title 5, United States Code) together with interest determined under regulations issued by the Secretary of State.

"(d) Credit shall be given under this System to a participant for a period of prior service under the Federal Employees' Retirement System (described in chapter 84 of title 5, United States Code) or under title III of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees if the participant waives credit under the other retirement system and makes a payment to the Fund equal to the amount which would have been deducted from pay under section 856(a) had the individual been a participant during the prior creditable service under the other retirement system together with interest on such amount computed in accordance with regulations issued by the Secretary of State.

"SEC. 855. ENTITLEMENT TO ANNUITY.—(a)(1) Any participant may be retired under the conditions specified in section 811 and shall be retired under the conditions specified in sections 812 and 813 and receive benefits under this subchapter.

"(2) For the purposes of this subsection—

"(A) the term 'participant', as used in the sections referred to in paragraph (1), means a participant in the Foreign Service Pension System; and

"(B) the term 'System', as used in those sections, means the Foreign Service Pension System.

"(b)(1) Any participant who retires voluntarily or mandatorily under section 607, 608, 811, 812, or 813 under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability System and who has completed at least 5 years of service subject to this chapter shall be entitled to an immediate annuity computed under paragraph (2).

"(2) An annuity under paragraph (1) shall be computed—

"(A) for all service earned while a participant in this System, at the rate stated in section 8415(d) of title 5, United States Code; and

"(B) for all service earned while a participant in another retirement system creditable under section 854(d), at the rate which would have been applicable to the individual had that individual remained a participant in the other system; and

"(C) for all volunteer service creditable under section 854(c), at the rate stated in section 8415(a) of title 5, United States Code.

"(c) A participant who is entitled to an immediate annuity under subsection (b) shall be entitled to receive an annuity supplement while the annuitant is under 62 years of age. The annuity supplement shall be based on the total creditable service of the annuitant and shall be computed in accordance with sections 8421(b) and 8421a of title 5, United States Code, as if the participant were a law enforcement officer retired under section 8412(d) of such title.

"(d) Any participant who is separated for cause under section 610 shall not be entitled to an annuity under this System when the Secretary determines that the separation was based in whole or in part on disloyalty to the United States.

"SEC. 856. DEDUCTIONS AND WITHHOLDINGS FROM PAY.—(a) The employing agency shall deduct and withhold from basic pay of each participant a percentage of basic pay equal to 7½ percent minus the

percentage then in effect under section 3101(a) of the Internal Revenue Code of 1954 (relating to the rate of tax for old age, survivors and disability insurance).

"(b) Each participant is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of a participant, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter based on the service of the participant.

"(c) Amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

"(d) Under such regulations as the Secretary of State may issue, amounts deducted under subsection (a) shall be entered on individual retirement records.

"SEC. 857. GOVERNMENT CONTRIBUTIONS.—(a) Each agency employing any participant shall contribute to the Fund the amount computed in a manner similar to that used under section 8423(a) of title 5, United States Code, pursuant to determinations of the normal cost percentage for the Foreign Service Pension System by the Secretary of State.

"(b)(1) The Secretary of State shall compute the amount of the supplemental liability of the Fund as of the close of each fiscal year beginning after September 30, 1987. The amount of any such supplemental liability shall be amortized in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the System.

"(2) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount of the installment computed under this subsection for such year.

"(3) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (2) of this subsection for such year.

"SEC. 858. COST-OF-LIVING ADJUSTMENTS.—Cost-of-living adjustments for annuitants under this System shall be granted under procedures in section 8462 of title 5, United States Code, in the same manner as such adjustments are made for annuitants referred to in subsection (c)(3)(B)(ii) of such section.

"SEC. 859. GENERAL AND ADMINISTRATIVE PROVISIONS.—(a) The Secretary of State shall administer the Foreign Service Pension System except for matters relating to the Thrift Savings Plan provided in subchapters III and VII of chapter 84 of title 5, United States Code. The Secretary of State shall, with respect to the Foreign Service Pension System, perform the functions and exercise the authority vested in the Office of Personnel Management or the Director of such Office by such chapter 84 and may issue regulations for such purposes.

"(b) Determinations of the Secretary of State under the Foreign Service Pension System which, if made by the Office of Personnel Management under chapter 84 of title 5, United States Code, or the

Director of such Office, would be appealable to the Merit Systems Protection Board shall, instead, be appealable to the Foreign Service Grievance Board, except that determinations of disability for participants shall be based upon the standards in section 808 (other than the exclusion for vicious habits, intemperance, or willful misconduct) and subject to review in the same manner as under that section.

"(c) At least every 5 years, the Secretary of the Treasury shall prepare periodic valuations of the Foreign Service Pension System and shall advise the Secretary of State of (1) the normal cost of the System, (2) the supplemental liability of the System, and (3) the amounts necessary to finance the costs of the System.

"SEC. 860. TRANSITION PROVISIONS.—The Secretary of State shall issue regulations providing for the transition from the Foreign Service Retirement and Disability System to the Foreign Service Pension System in a manner comparable to the transition of employees subject to subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), to the Federal Employees' Retirement System. For this and related purposes, references made to participation in subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), the Social Security Act, and the Internal Revenue Code of 1954 shall be deemed to refer to participation in the Foreign Service Pension System or the Foreign Service Retirement and Disability System, as appropriate.

"SEC. 861. FORMER SPOUSES.—(a)(1)(A) Unless otherwise expressly provided by any spousal agreement or court order governing disposition of benefits under this subchapter, a former spouse of a participant or former participant is entitled, during the period described in subparagraph (B), to a share (determined under paragraph (2)) of all benefits otherwise payable to such participant under this subchapter if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this chapter with at least 5 of such years occurring while the participant was a member of the Foreign Service.

"(B) The period referred to in subparagraph (A) is the period which begins on the first day of the month following the month in which the divorce or annulment becomes final and ends on the last day of the month before the former spouse dies or remarries before 55 years of age.

"(2) The share referred to in paragraph (1) equals—

"(A) 50 percent, if such former spouse was married to the participant throughout the actual years of service of the participant which are creditable under this chapter; or

"(B) a pro rata share of 50 percent, if such former spouse was not married to the participant throughout such creditable service.

"(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

"(4)(A) For purposes of the Internal Revenue Code of 1954, payments to a former spouse under this section shall be treated as income to the former spouse and not to the participant.

"(B) Any reduction in payments to a participant or former participant as a result of payments to a former spouse under this subsection shall be disregarded in calculating—

"(i) the survivor annuity for any spouse, former spouse, or other survivor under this subchapter, and

"(ii) any reduction in the annuity of the participant to provide survivor benefits under this subchapter.

"(5) Notwithstanding subsection (a)(1), in the case of any former spouse of a disability annuitant—

"(A) the annuity of the former spouse shall commence on the date the participant would qualify, on the basis of his or her creditable service, for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

"(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

"(6)(A) Except as provided in subparagraph (B), any former spouse who becomes entitled to receive any benefit under this subchapter which would otherwise be payable to a participant or former participant shall be entitled to make any election regarding method of payment to such former spouse that such participant would have otherwise been entitled to elect, and the participant may elect an alternate method for the remaining share of such benefits. Such elections shall not increase the actuarial present value of benefits expected to be paid under this subchapter.

"(B) A former spouse may not elect a method of payment under subchapter II, chapter 84 of title 5, United States Code, providing for payment of a survivor annuity to any survivor of the former spouse.

"(7) The maximum amount payable to any former spouse pursuant to this subsection shall be the difference, if any, between 50 percent of the total benefits authorized to be paid to a former participant by this subchapter, disregarding any apportionment of these benefits to others, and the aggregate amount payable to all others at any one time.

"(b)(1) Unless otherwise expressly provided for by any spousal agreement or court order governing survivorship benefits under this subchapter to a former spouse married to a participant or former participant for the periods specified in subsection (a)(1)(A), such former spouse is entitled to a share, determined under subsection (b)(2), of all survivor benefits that would otherwise be payable under this subchapter to an eligible surviving spouse of the participant.

"(2) The share referred to in subsection (b)(1) equals—

"(A) 100 percent if such former spouse was married to the participant throughout the entire period of service of the participant which is creditable under this chapter; or

"(B) a pro rata share of 100 percent if such former spouse was not married to the participant throughout such creditable service.

"(c) A participant or former participant may not make any election or modification of election under section 8417, 8418, or 8433 of title 5, United States Code, or other section relating to the participant's account in the Thrift Savings Plan or annuity under the basic

plan that would diminish the entitlement of a former spouse to any benefit granted to the former spouse by this section or in a current spousal agreement.

"(d) If a member becomes a participant under this subchapter after qualifying for benefits under subchapter I and, at the time of transfer, has a former spouse entitled to benefits under subchapter I which are determined under section 814 or 815 (as determined by the Secretary of State) and are similar in amount to a pro rata share division under section 814 or 815 and the service of the member as a participant under this subchapter is not recognized in determining that pro rata share, then subsections (a) and (b) of this section shall not apply to such former spouse. Otherwise, subsections (a) and (b) of this section shall apply.

"(e) If a participant dies after completing at least 18 months of service or a former participant dies entitled to a deferred annuity, but before becoming eligible to receive the annuity, and such participant or former participant has left with the Secretary of State a spousal agreement promising a share of a survivor annuity under subchapter IV, chapter 84, title 5, United States Code, to a former spouse, such survivor annuity shall be paid under the terms of this subchapter as if the survivor annuity had been ordered by a court.

"SEC. 862. SPOUSAL AGREEMENTS.—A spousal agreement is any written agreement (properly authenticated as determined by the Secretary of State) between a participant or former participant and his or her spouse or former spouse on file with the Secretary of State. A spousal agreement shall be consistent with the terms of this Act and applicable regulations and, if executed at the time a participant or former participant is currently married, shall be approved by such current spouse. It may be used to fix the level of benefits payable under this subchapter to a spouse or former spouse.".

SEC. 416. TABLE OF CONTENTS.

The table of contents in section 2 of such Act is amended—

(1) by striking out the item relating to chapter 8 and inserting in lieu thereof the following:

"CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY

"SUBCHAPTER I—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM"; and

(2) by inserting after the item relating to section 827 the following:

"Sec. 828. Remarriage.

"SUBCHAPTER II—FOREIGN SERVICE PENSION SYSTEM

"Sec. 851. Establishment.
"Sec. 852. Definitions.
"Sec. 853. Participants.
"Sec. 854. Creditable service.
"Sec. 855. Entitlement to annuity.
"Sec. 856. Reduction and withholdings from pay.
"Sec. 857. Government contributions.
"Sec. 858. Cost-of-living adjustments.
"Sec. 859. General and administrative provisions.
"Sec. 860. Transition provisions.
"Sec. 861. Former spouses.
"Sec. 862. Spousal agreements.".

SEC. 417. EFFECTIVE DATE.

(a) REGULATIONS.—Notwithstanding section 702 of this Act, the authority of the Secretary of State to issue regulations under subchapter II of title 8 of the Foreign Service Act of 1980 shall take effect on the date of enactment of this Act.

(b) 18-MONTH PERIOD TO ELECT SURVIVOR ANNUITY.—(1) Notwithstanding section 702 of this Act, the amendment made by section 407 shall take effect 3 months after the date of enactment of this Act.

(2)(A) Subject to subparagraph (B), the amendment made by section 407 shall apply with respect to participants and former participants who retire before, on, or after such amendment first takes effect.

(B) For the purpose of applying the provisions of paragraph (1) of section 806(n) of the Foreign Service Act of 1980 (as added by section 407) to former participants who retire before the date on which the amendment first takes effect—

(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be considered to begin on the date on which such amendment first becomes effective; and

(ii) the amount referred to in paragraph (2) of such section 806(n) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

(3) For purposes of this subsection, the term "participant" has the meaning given that term in section 803 of the Foreign Service Act of 1980 (22 U.S.C. 4043).

TITLE V—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND RELATED MATTERS

SEC. 501. REFERENCES.

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees (78 Stat. 1043; 50 U.S.C. 403 note) is amended—

(1) in section 201(c), by inserting "(except section 305(d) of this Act)" after "or any other provisions of law";

(2) by striking out "this Act" each place it appears in title II except in sections 201 and 264, and inserting in lieu thereof "this title"; and

(3) by inserting "under this title" after "payable from the fund" each place it appears in title II.

SEC. 502. CONTRIBUTIONS TO THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM.

Section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended—

(1) by striking out "Seven" in the first sentence of subsection (a) and inserting in lieu thereof "Except as provided in subsection (d), seven"; and

(2) by adding at the end thereof the following new subsection (d):

"(d)(1) In the case of a participant who was a participant subject to this title before January 1, 1984, and whose service—

"(A) is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, and

"(B) is not creditable service for any purpose under title III of this Act or chapter 84 of title 5, United States Code,

there shall be deducted and withheld from the basic pay of the participant under this subsection during any pay period only the amount computed pursuant to paragraph (2).

"(2) The amount deducted and withheld from the basic pay of a participant during any pay period pursuant to paragraph (1) shall be the excess of—

"(A) the amount determined by multiplying the percent applicable to the participant under subsection (a) by the basic pay payable to the participant for such pay period, over

"(B) the amount of the taxes deducted and withheld from such basic pay under section 3101(a) of the Internal Revenue Code of 1954 (relating to old-age, survivors, and disability insurance) for such pay period.".

SEC. 503. OFFSET OF ANNUITY BY THE AMOUNT OF SOCIAL SECURITY BENEFITS.

Section 221 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following new subsection:

"(p)(1) Notwithstanding any other provision of this title, except as provided in paragraph (2), an annuity (including a disability annuity) payable under this title to an individual described in section 301(c)(1) and any survivor annuity payable under this title on the basis of the service of such individual shall be reduced in a manner consistent with section 8349 of title 5, United States Code, under conditions consistent with the conditions prescribed in such section.

"(2) This section shall not apply with respect to any annuity, or survivor annuity, which is based on the service of an individual described in section 301(c)(2).".

SEC. 504. THRIFT SAVINGS FUND PARTICIPATION BY PARTICIPANTS IN THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM.

Part K of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following new section:

"THRIFT SAVINGS FUND PARTICIPATION BY PARTICIPANTS IN THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

"SEC. 293. (a) Participants in the Central Intelligence Agency Retirement and Disability System shall be deemed to be employees for the purposes of section 8351 of title 5, United States Code.

"(b) Subsections (k) and (m) of section 8461 of title 5, United States Code, shall apply with respect to contributions made by officers and employees of the Agency to the Thrift Savings Fund under section 8351 of such title, and to earnings attributable to the investment of such contributions.".

SEC. 505. ALTERNATIVE FORMS OF ANNUITIES.

Part K of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (as amended by section 504 of

this Act) is further amended by adding at the end thereof the following new section:

"ALTERNATIVE FORMS OF ANNUITIES

"SEC. 294. (a) The Director shall prescribe regulations under which an officer or employee of the Agency may, at the time of retiring under this title (other than under section 231), elect annuity benefits under this section instead of any other benefits under this title (including any survivor benefits under this title) based on the service of the officer or employee creditable under this title. The regulations and alternatives shall, to the maximum extent practicable, meet the requirements prescribed in section 8343a of title 5, United States Code.

"(b) Notwithstanding any other provision of law, any lump-sum credit provided pursuant to an election under subsection (a) shall not preclude an individual from receiving other benefits provided under such subsection.

"(c) The Director shall submit the regulations prescribed under subsection (a) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.".

SEC. 506. PARTICIPATION IN THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following:

"TITLE III—PARTICIPATION IN THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM

"APPLICATION OF FEDERAL EMPLOYEES' RETIREMENT SYSTEM TO AGENCY EMPLOYEES

"SEC. 301. (a) Except as provided in subsections (b) and (c), all officers and employees of the Agency, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, shall be subject to chapter 84 of title 5, United States Code.

"(b) Participants in the Central Intelligence Agency Retirement and Disability System who were participants in such system on or before December 31, 1983, and who have not had a break in service in excess of 1 year since that date, are not subject to chapter 84 of title 5, United States Code, without regard to whether they are subject to title II of the Social Security Act.

"(c)(1) The provisions of chapter 84 of title 5, United States Code, shall not apply with respect to—

"(A) any individual who separates, or who has separated, from Federal Government service after having been an officer or employee of the Agency subject to title II of this Act; and

"(B) any officer or employee of the Agency having at least 5 years of civilian service which was performed before January 1, 1987, and is creditable under title II of this Act (determined without regard to any deposit or redeposit requirement under subchapter III of chapter 83 of title 5, United States Code, or

under title II of this Act, or any requirement that the individual become subject to such subchapter or to title II of this Act after performing the service involved).

"(2) Paragraph (1) shall not apply with respect to an individual who has elected under regulations prescribed under section 307 of this Act to become subject to chapter 84 of title 5, United States Code, to the extent provided in such regulations.

"(3) An individual described in paragraph (1) shall be deemed to be an individual excluded under section 8402(b)(2) of title 5, United States Code.

"(d) The application of the provisions of chapter 84 of title 5, United States Code, to officers and employees referred to in subsection (a) shall be subject to the exceptions and special rules provided in this title. Any provision of such chapter which is inconsistent with a special rule provided in this title shall not apply to such officers and employees.

"SPECIAL RULES RELATING TO SECTION 203 CRITERIA EMPLOYEES

"SEC. 302. (a) Except as otherwise provided in this section, in the application of chapter 84 of title 5, United States Code, to an officer or employee of the Agency who is subject to such chapter and is designated by the Director under the criteria prescribed in section 203, such officer or employee shall be treated for purposes of determining such officer's or employee's retirement benefits and obligations under such chapter as if the officer or employee were a law enforcement officer (as defined in section 8401(17) of title 5, United States Code).

"(b) The provisions of sections 233 and 235 of this Act shall apply to officers and employees referred to in subsection (a), except that the retirement benefits shall be determined under the provisions of chapter 84 of title 5, United States Code.

"(c)(1) Except as provided in paragraph (2), section 271 of this Act shall apply to an officer or employee referred to in subsection (a).

"(2) Contributions during recall service shall be made as provided in section 8422 of title 5, United States Code.

"(3) When an officer or employee recalled under this subsection reverts to a retired status, the annuity of such officer or employee shall be redetermined under the provisions of chapter 84 of title 5, United States Code.

"SPECIAL RULES FOR OTHER EMPLOYEES FOR SERVICE ABROAD

"SEC. 303. (a) Notwithstanding any provision of chapter 84 of title 5, United States Code, the annuity under subchapter II of such chapter of a retired officer or employee of the Agency who is not designated under section 302(a) of this Act and has served abroad as an officer or employee of the Agency shall be computed as provided in subsection (b).

"(b)(1) The portion of the annuity relating to service abroad performed on or after the effective date of the Federal Employees' Retirement System Act of 1986 shall be computed as provided in section 8415(d) of title 5, United States Code.

"(2) The portions of the annuity relating to other service in the Agency shall be computed as provided in the provision of section

8415 of such title that is applicable to such service under the conditions prescribed in chapter 84 of such title.

"SPECIAL RULES FOR FORMER SPOUSES

"SEC. 304. (a) Section 8445 of title 5, United States Code, and subsections (d) and (e) of section 8435 of such title shall not apply in the case of an officer or employee of the Agency who is subject to chapter 84 of title 5, United States Code, and who has a former spouse (as defined in section 204(b)(4) of this Act). Any reference in such chapter to a survivor annuity for a former spouse, as applied to such officer or employee, shall be deemed to refer to a survivor annuity for a former spouse of such officer or employee provided under subsection (c) of this section.

"(b) Section 221(b)(1)(C) of this Act shall apply to a survivor annuity under subsection (c)(2) of this section.

"(c) Except as otherwise provided in this section, the following provisions of title II of this Act shall apply in the case of an officer or employee of the Agency who is entitled to receive an annuity under subchapter II, III, or V of chapter 84 of title 5, United States Code, in the same manner as such provisions apply in the case of an officer or employee of the Agency under title II:

"(1) Section 222, except that subsections (b) and (c) of such section shall be subject to a waiver under subsection (b) of this section.

"(2) Subsections (a), (b)(1), and (b)(3) of section 223 and the first sentence of subsection (c) of such section.

"(3) Subsections (c) and (d) of section 234 (in the case of any lump-sum payment under section 8424(a) of title 5, United States Code, and any payment under subsection (b)(3), (b)(4), (c)(3), (c)(4), or (d) of section 8433 of such title).

"(4) Section 263(b).

"(d) In the application of section 222(a) under subsection (c)(1)—

"(1) the reference in paragraph (4)(B) of such section to section 271, 272, or 273 of this Act shall be deemed to refer to any similar provision of law applicable to such officer or employee for purposes of chapter 84 of title 5, United States Code;

"(2) the amount of the reduction in the salary of a recalled or reinstated officer or employee under such paragraph (4)(B) shall be only the amount by which the annuity under subchapter II or V of chapter 84 of title 5, United States Code, would have been reduced; and

"(3) amounts to be deposited in the Treasury of the United States pursuant to such paragraph (4)(B) shall be credited to the Civil Service Retirement and Disability Fund.

"(e) In the application of subsections (b) and (c) of section 222 under subsection (c)(2)—

"(1) the percentage prescribed in subsections (b)(1)(A), (b)(1)(B), (b)(4)(A), and (c)(2) of such section shall be deemed to be 50 percent;

"(2) for the purpose of computing the amount of the former spouse's annuity under subsection (b)(1) of such section and the maximum amount of survivor annuities under subsection (b)(4)

or (c)(2) of such section, the full amount of the deceased officer's or employee's annuity—

"(A) in the case of an annuity under subchapter II or V of chapter 84 of title 5, United States Code, is the amount of such annuity computed without regard to the reduction for survivor annuities; and

"(B) in the case of an annuity under subchapter III of such chapter, is the amount of such annuity computed on an actuarial basis as provided in such subchapter taking into account the application of section 222(b)(1) in the case of such annuity;

"(3) an election under subsection (b)(5)(B) of such section shall apply with respect to a survivor annuity for a spouse under section 8442 of title 5, United States Code;

"(4) the reference in subsection (c)(2) of such section to a survivor annuity for a spouse shall be deemed to refer—

"(A) in the case of an annuity under subchapter II or V of chapter 84 of title 5, United States Code, to the survivor annuity provided in section 8442 of title 5, United States Code; and

"(B) in the case of an annuity under subchapter III of such chapter, to the survivor annuity described in section 8435(c) of such title; and

"(5) the fund referred to in subsections (c)(3)(A) and (c)(3)(B) of such section shall be deemed to refer—

"(A) in the case of an annuity under subchapter II or V of chapter 84 of title 5, United States Code, to the Civil Service Retirement and Disability Fund; and

"(B) in the case of an annuity under subchapter III of such chapter, the Thrift Savings Fund established by section 8437 of such title.

"(f) A reduction in the annuity of an officer or employee of the Agency to provide a survivor annuity or survivor annuities under this section shall be computed as provided in section 8419(a) of title 5, United States Code.

"(g) The entitlement of a former spouse to a portion of an annuity of a retired officer or employee of the Agency under this section shall extend to any supplementary annuity payment that such officer or employee is entitled to receive under section 8421 of title 5, United States Code.

"ADMINISTRATIVE PROVISIONS

"SEC. 305. (a) Section 201(c) of this Act shall apply in the administration of chapter 84 of title 5, United States Code, with respect to officers and employees of the Agency.

"(b) Notwithstanding subsection (a), section 8461(e) of title 5, United States Code, shall apply with respect to officers and employees of the Agency who are not participants in the Central Intelligence Agency Retirement and Disability System and are not designated under section 302(a) of this Act.

"REGULATIONS

"SEC. 306. (a) The Director, in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board, shall prescribe in regulations appropriate procedures to carry out this title.

"(b) The Director shall submit the regulations prescribed under subsection (a) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee of the House of Representatives before the regulations take effect.

"TRANSITION PROVISIONS

"SEC. 307. (a) The Director shall issue regulations providing for the transition from the Central Intelligence Agency Retirement and Disability System to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, in a manner consistent with sections 301 through 304 of the Federal Employees' Retirement System Act of 1986.

"(b) The Director shall submit the regulations prescribed under subsection (a) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.".

SEC. 507. SPECIAL RETIREMENT ACCRUAL FOR OTHER INTELLIGENCE PERSONNEL.

(a) CERTAIN NATIONAL SECURITY AGENCY PERSONNEL.—Section 9(b)(1)(B) of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by inserting before the semicolon the following: "(including special retirement accrual in the same manner provided in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note))".

(b) CERTAIN DEFENSE INTELLIGENCE AGENCY PERSONNEL.—Section 1605(a) of title 10, United States Code, is amended by adding at the end thereof the following: "The Secretary may also provide to any such civilian personnel who are subject to chapter 84 of title 5, special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note).".

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. ANNUITIES FOR SURVIVORS OF DISTRICT OF COLUMBIA JUDGES.

(a) AMENDMENTS TO DISTRICT OF COLUMBIA CODE.—(1) Subsections (a) and (b) of section 11-1567 of title 11 of the District of Columbia Code are each amended by striking out "3 per centum" each place it appears and inserting in lieu thereof "3.5 percent".

(2)(A) Subsection (a) of section 11-1568 of title 11 of the District of Columbia Code is amended by striking out "computing a survivor annuity" and inserting in lieu thereof "any provision of this subchapter which refers to this subsection".

(B) Subsection (c) of section 11-1568 of title 11 of the District of Columbia Code is amended—

(i) in paragraph (2)(B), by striking out "the lesser of (i) $2,700 per year divided by the number of such children or (ii) $900" and inserting in lieu thereof "the lesser of (i) $8,424 per year divided by the number of such children or (ii) $2,808";

(ii) in paragraph (3), by striking out "the lesser of (A) $3,240 per year divided by the number of children or (B) $1,080" and inserting in lieu thereof "the lesser of (A) $10,110 per year divided by the number of such children or (B) $3,370";

(iii) by inserting before the first sentence of the matter following paragraph (3) the following:

"For the purpose of computing, under this subsection, the annuity of a child that commences on or after January 1, 1987, the figures $8,424, $2,808, $10,110, and $3,370 (provided in paragraphs (2) and (3)) shall be increased by the total percentage of the increases allowed and in force with respect to retirement salaries of judges under section 11-1571(a) of this title on or after such date."; and

(iv) in the first sentence of the matter following paragraph (3) by striking out "remarriage" and inserting in lieu thereof "upon remarriage prior to the attainment of fifty-five years of age".

(C) Subsection (e) of section 11-1568 of title 11 of the District of Columbia Code is amended to read as follows:

"(e) The annuity of a widow or widower of a judge or retired judge who elected a survivor annuity shall be equal to—

"(1) in the case of a judge who dies while in active regular service as a judge, the greater of—

"(A) 55 percent of the retirement salary the judge would have been entitled to receive (as computed under section 11-1564) if the judge had retired on the day before the date of death (without regard to the age requirements prescribed in section 11-1562(b)), or

"(B) 55 percent of the retirement salary the judge would have been entitled to receive (as computed under section 11-1564) if the judge had retired on the day before the date of death with 15 years of service for the purposes of this subchapter (without regard to the age requirements prescribed in section 11-1562(b)); and

"(2) in the case of a retired judge, 55 percent of the retirement salary payable to such judge on the day before the date of the judge's death.".

(b) APPLICATION OF AMENDMENTS.—The benefits conferred by section 11-1568 of title 11 of the District of Columbia Code, by reason of the amendments made by subsection (a) shall apply to individuals eligible for annuities under such sections on or after the date of the enactment of this Act, except that—

(1) such annuities shall be computed in accordance with the provisions of such section, as amended by subsection (a), notwithstanding contributions or deposits made in accordance with applicable law at lower rates; and

(2) no additional liability shall be created with respect to deposits made in accordance with applicable law before the date of the enactment of this Act, or after such date pursuant to an installment payment election made under section 11-1567(b) of title 11 of the District of Columbia Code, before such date.

(c) OPPORTUNITY TO REVOKE A PREVIOUS SURVIVOR ANNUITY ELECTION.—(1)(A) Any individual who, before the date of the enactment of this Act, made an election under section 11–1566 of title 11 of the District of Columbia Code, to come within the purview of the survivor annuity provisions of subchapter III of chapter 15 of such title may revoke that election. Such a revocation shall constitute a complete withdrawal from the survivor annuity program provided for in such subchapter.

(B) A revocation under subparagraph (A) shall be submitted in writing to the Mayor of the District of Columbia.

(2) A revocation under paragraph (1) shall be effective on the day it is received by the official referred to in subparagraph (B) of such paragraph.

(3)(A) On the effective date of a revocation under paragraph (1), any right to survivor benefits (to which the revocation relates) for the survivors of the individual who makes the revocation shall terminate, and all amounts credited to the account of such individual under section 11–1570(c) of title 11 of the District of Columbia Code, together with interest computed as provided in subparagraph (B), shall be returned to that individual in a lump-sum payment.

(B) For the purpose of subparagraph (A), interest shall be computed in accordance with section 11–1561(10)(C) of title 11 of the District of Columbia Code.

(4)(A) Any individual who makes a revocation under paragraph (1) and who thereafter becomes eligible to make an election under section 11–1556 of title 11 of the District of Columbia Code, may make such election only if such individual redeposits, to the credit of the District of Columbia Judge's Retirement Fund referred to in section 11–1561(4) of such title, the full amount of the lump-sum payment made to such individual under paragraph (4), together with interest.

(B) For the purpose of subparagraph (A), interest shall be computed at 3 percent per annum, compounded on December 31 of each year from the date of the lump-sum payment referred to in such subparagraph until the date on which the amount referred to in such subparagraph is redeposited under such subparagraph.

(d) ADDITIONAL OPPORTUNITY TO MAKE A SURVIVOR ANNUITY ELECTION.—(1) Any individual who, on or before the date of the enactment of this Act, has not made an election under section 11–1566(a) of title 11 of the District of Columbia Code, to come within the purview of the survivor annuity provisions of subchapter III of chapter 15 of such title and is no longer entitled to make such an election may make such an election. Any such election shall be submitted in writing to the Mayor of the District of Columbia.

(2) An election under paragraph (1) shall be effective on the day it is received by the official referred to in such paragraph.

(e) PERIOD FOR EXERCISE OF RIGHT TO REVOKE OR ELECT.—The right to revoke an election under subsection (d) or to make an election under subsection (e) is irrevocably waived if not exercised within 180 days after the date of the enactment of this Act.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATES

SEC. 701. AUTHORIZATION OF APPROPRIATIONS FOR CERTAIN EXPENSES OF THE FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM.

(a) TEMPORARY ALTERNATIVE FUNDING.—Notwithstanding section 8434(c)(3) of title 5, United States Code (as added by section 101 of this Act), the expenses incurred in the administration of the Federal Retirement Thrift Investment Management System under subchapter VII of chapter 84 of such title (as so added) during fiscal years 1986 and 1987 shall be paid from sums appropriated pursuant to subsection (b).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Retirement Thrift Investment Board, for fiscal years 1986 and 1987, such sums as may be necessary to pay the expenses incurred in the administration of the Federal Retirement Thrift Investment Management System during such fiscal years.

SEC. 702. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on January 1, 1987.

(b) EXCEPTIONS.—(1) Subchapter VII of chapter 84 of title 5, United States Code, as added by section 101 of this Act, shall take effect on the date of the enactment of this Act.

(2) Except as provided in section 305 of this Act, title III of this Act, and the amendments made by such title, shall take effect on the date of the enactment of this Act.

(3) The amendments made by sections 204 and 205 of this Act shall take effect on the date of the enactment of this Act.

(4) Section 401 of this Act shall take effect on the date of the enactment of this Act.

(5) Sections 505 and 601 of this Act and the amendments made by such section 601 shall take effect on the date of the enactment of this Act.

(c) FIRST COST-OF-LIVING ADJUSTMENT.—(1) For purposes of the first adjustment under subsection (b) of section 8462 of title 5, United States Code (as added by section 101 of this Act), the base quarter ending on September 30, 1986, shall be considered to have been the base quarter for a year in which an adjustment under such subsection was made.

(2) As used in paragraph (1), the term "base quarter" has the meaning provided by section 8462(a)(1) of title 5, United States Code (as added by section 101 of this Act).

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill, and agree to the same.

W.V. ROTH, Jr.,
TED STEVENS,
CHARLES McC. MATHIAS, Jr.,
TOM EAGLETON,
ALBERT GORE, Jr.,
Managers on the Part of the Senate.

From the Committee on Post Office and Civil Service:

For consideration of the Senate amendments Nos. 1, 2, and 3 and modifications committed to conference:

WILLIAM D. FORD,
WILLIAM CLAY,
MARY ROSE OAKAR,
GENE TAYLOR,
JOHN T. MYERS,

As additional conferees on Senate Amendment No. 3:

From the Permanent Select Committee on Intelligence:

For consideration of title IV of the Senate amendment and modifications committed to conference:

LEE H. HAMILTON,
LOUIS STOKES,
ANTHONY C. BEILENSON,
BOB STUMP,
ANDY IRELAND,

As additional conferees on Senate Amendment No. 3:

From the Committee on Foreign Affairs:

For consideration of title V of the Senate amendment and modifications committed to conference:

DANIEL A. MICA,
PETER H. KOSTMAYER,
OLYMPIA SNOWE,

As additional conferees on Senate Amendment No. 3:

From the Committee on Ways and Means:

For consideration of provisions in section 101 of the Senate amendment establishing a new subchapter III of chapter 84—Thrift Savings Plan; establishing a new section 8475 in subchapter VII—transition provisions; of title II of the Senate amendment; and of section 305 of the Senate amendment and modifications committed to conference:

BILL ARCHER,
WM. THOMAS,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2672) to redesignate the New York International and Bulk Mail Center in Jersey City, New Jersey, as the "New Jersey International and Bulk Mail Center", and to honor the memory of a former postal employee by dedicating a portion of a street at the New York International and Bulk Mail Center in Jersey City, New Jersey, as "Michael McDermott Place", submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

H.R. 2672, as passed by the House, redesignated a bulk mail center and honors a former postal employee by dedicating a portion of a street in memory of such employee. The Senate adopted three amendments to the House bill. The first two made technical changes to these provisions relating to the bulk mail center. The third amendment embodied S. 1527, a bill establishing a new retirement system for certain Federal employees. The House disagreed with the Senate amendments and requested a conference.

Because the bill, as passed by the House, does not include provisions relating to the establishment of a new retirement system, the scope of the conference relating to the retirement provisions was limited to the Senate provisions and current law. However, a bill establishing a new retirement system was introduced in the House and ordered reported from the Committee on Post Office and Civil Service (H.R. 3660). Thus, while the House committee's reported bill was not in conference, the managers of both Houses were cognizant of its provisions and incorporated many of them in the conference agreement. The conferees acknowledge that H.R. 2672, as passed by the House, has no provisions comparable to the Senate's retirement provisions, but, for the sake of clarity, this statement of managers references the provisions of the bill (H.R. 3660) reported from the House committee.

Senate Amendment No. 1

The House recedes to the Senate.

Senate Amendment No. 2

The House recedes to the Senate.

Senate Amendment No. 3

The House concurs in the Senate amendment with an amendment which is explained below.

FEDERAL EMPLOYEES' RETIREMENT SYSTEM

TITLE

The Senate amendment entitles the new retirement system the Federal Retirement System.

The House bill has no comparable provision.

The House committee bill entitles the system, the Civil Service Supplemental Retirement System.

The conference agreement entitles the system, the Federal Employees' Retirement System (FERS).

BASIC PLAN

Coverage

The Senate amendment covers all Federal employees (including congressional staff and employees of Gallaudet College) hired, or rehired after a break in service for more than one year, after December 31, 1983. Additionally, all Members of Congress elected or appointed after December 31, 1983, are similarly covered. United States Park Police and the United States Secret Service hired, or rehired after the requisite break in service, after the above date are covered. Nonappropriated fund employees of the Department of Defense hired, or rehired after the requisite break in service, after the above date are covered. Members of the Foreign Service and certain employees of the Central Intelligence Agency (CIA) are covered under special provisions. A special arrangement is provided for those employees and Members of Congress who are covered by both the Civil Service Retirement System (CSRS) and the Social Security Act.

Under the Senate amendment all employees and Members of Congress covered by the CSRS or other related Government retirement programs may transfer into this system during a one-year window period. Employes of the District of Columbia are not covered and are prospectively excluded from CSRS beginning January 1, 1987.

The House bill has no comparable provision.

The House committee bill covers Civil Service employees, including congressional staff and employees of Gallaudet College, hired after December 31, 1983. Coverage is also extended to those employees rehired after the above date with a break in service of more than one year if those employees served less than five years under CSRS. Members of Congress, the Park Police and the Secret Service are also covered. A special arrangement similar to the Senate provision is provided for those employees and Members covered by CSRS and the Social Security act. Employees covered by CSRS may not transfer into the new system. Employees of the District of Columbia are not covered and are prospectively excluded from CSRS beginning October 1, 1987.

The conference agreement adopts the Senate provisions with modifications. Similar to the House committee bill, rehired employees with 5 years or more prior service subject to CSRS retain coverage under a revised CSRS. District of Columbia employees hired after October 1, 1987 are excluded from CSRS. Nonappropriated

fund employees are not covered. Employees under the current retirement system will have six months beginning July 1, 1987, to elect into the new system.

Creditable service

The Senate amendment provides that creditable service includes service in a covered position in the new retirement system, service covered by the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, military service, service creditable under CSRS (only for purposes under transition provisions), leaves of absences creditable under CSRS, and unused sick leave.

The House bill has no comparable provision.

The House committee bill provides that creditable service for most individuals includes civilian service subject to social security, military service, service covered by the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, leaves of absence without pay while serving in the military or receiving worker's compensation, other leaves of absence of 6 months or less, and certain leaves of absence without pay for full-time service in an employee organization if the cost of such service is fully paid by the employee.

The conference agreement generally adopts the approach of the House committee bill except that a period of post-1956 military service is creditable only if the employee makes a contribution to the retirement fund equal to 3 percent of the employee's military base pay for such period. The conferees decided that the cost of retirement credit for military service should be absorbed, in part, by the employer as is the case under the CSRS. The ratio of the employee contribution for military service (3 percent) to the cost of the defined benefit plan under FERS is comparable to that under CSRS.

The conferees note that under FERS sick leave is not creditable service except for such leave carried into the system by an employee who transfers from CSRS. The conferees urge the Office of Personnel Management to examine the sick leave usage by employees under FERS. The conferees are concerned that without an incentive to save sick leave, the use of sick leave may substantially increase.

One plan

The Senate amendment provides two retirement options. Upon employment employees have 90 days in which to irrevocably choose between the two.

The House bill has no comparable provision, but the House committee bill provides for only one retirement plan.

The conference agreement adopts the House committee approach. The managers agree that, for personnel management and administrative reasons, one plan is preferable. Under FERS employees will have significant flexibility and choice with respect to participation and investment options in the thrift plan.

Vesting

The Senate amendment provides that benefits will vest after five years of civilian service.

The House bill has no comparable provision. The House committee bill also provides that benefits vest after five years of civilian service.

The conference agreement adopts the House committee bill approach, with the qualification that service for which a refund of contributions has been made is irrevocably forfeited as creditable service.

Salary base

The Senate amendment provides a salary base of the average of an employee's five highest consecutive years of salary to determine the retirement benefit.

The House bill has no comparable provision.

The House committee bill provides a salary base of the average of an employee's three highest consecutive years of salary to determine the retirement benefit.

The conference agreement adopts the House committee approach.

Accrual rate

The Senate amendment provides an accrual rate equal to .9 percent for each year of service for the first 15 years and 1.1 percent for each year over 15 years.

The House bill has no comparable provision.

The House committee bill provides an accrual rate equal to 1 percent for each year of service.

The conference agreement adopts the approach of the House committee bill, except that the accrual rate is 1.1 percent for each year of service if the employee is at least age 62 at the time of retirement and has completed at least 20 years of service.

Employee contributions

The Senate amendment (Option A) does not require employee contributions. Option B requires employees to contribute to the retirement fund an amount based on the difference between the Old Age, Survivor and Disability Insurance (OASDI) tax and the amount the employees would have been required to contribute to CSRS had they been covered under CSRS.

The House bill has no comparable provision.

The House committee bill requires employees to contribute to the retirement fund an amount based on the difference between the OASDI tax rate and the CSRS contribution rate.

The conference agreement adopts the House committee approach. The conferees wrestled with the question of whether the basic plan should be contributory. Each dollar required as a contribution to the basic plan leaves one dollar less available for investment in the thrift plan. The conferees resolved the dilemma by mandating an employee contribution to the basic plan while at the same time requiring an employer thrift plan contribution which approximates the required employee contribution.

The required employee contributions to the basic plan will be 1.3 percent of basic pay in 1987, 0.94 percent from 1988 to 1990, and 0.8 percent in 1990 and thereafter. This is in addition to the mandatory OASDI tax.

Eligibility for unreduced benefits

The Senate amendment (Option A) provides unreduced benefits at age 62 with at least five years of service. Option B provides benefits at age 55 with 30 or more years of services or at age 62 with 5 or more years of service.

The House bill has no comparable provision, but the House committee bill provides unreduced benefits at age 55 with 30 or more years of service, at age 60 with 20 or more years of service, or at 62 with 5 or more years of service.

The conference agreement provides unreduced benefits at age 60 with 20 or more years of service and at age 62 with five or more years of service. In addition, it establishes a gradually increasing "minimum retirement age" for employees with 30 or more years of service. Until the year 2003, an employee with 30 years of service may retire at age 55. Beginning in the years 2003 the minimum retirement age increases by two months every year until year 2009. Thus, at year 2009 the employee must be age 56 to retire with 30 or more years of service. Age 56 is the minimum retirement age until the year 2020. Beginning in the year 2021 the minimum retirement age again increases by two-month increments until the year 2027. Thus, in the year 2027 the minimum retirement age to retire with 30 or more years of service is 57. Thereafter, age 57 is the permanent age for eligibility to retire with 30 or more years of services.

The conferees believe that 30 years of service with the Federal Government should be rewarded by an unreduced retirement benefit. The graduated minimum retirement age (which is analagous to future normal retirement age increases under the Social Security Act) takes into account changing demographics and increases in employee longevity.

Eligibility for reduced benefits

The Senate amendment (Option A) provides for two forms of reduced retirement benefits at age 55 depending upon whether the individual had 30 or more years of service or 10–30 years of service. An employee retiring after age 55 with 30 or more years of service would experience a 2 percent per year reduction for each year the employee was under the age of 62. An employee could also retire after age 55 with 10 or more years of service with a 5 percent per year reduction for each year the employee was under the age of 62.

Under Option B, an employee retiring after age 55 with 30 or more years of service would experience no reduction. An employee retiring after age 55 with 10–30 years of service would experience the same reduction as under Option A.

Neither the House bill nor the House committee bill has a comparable provision.

The conference agreement essentially adopts the provisions of the Senate amendment Option B, with one modification. The minimum retirement age for the reduced benefit increases gradually from 55 to 57. Ten years of service are required. For an employee retiring with less than 30 years of service a reduction of 5 percent per year for each year under age 62 is imposed, permitting flexibility for employee retirement planning at no additional cost to the Government.

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Deferred benefits

The Senate amendment entitles former employees who have sufficient service and who attain the applicable minimum age for immediate retirement to deferred benefits. Under Option A, a former employee is entitled to an unreduced deferred benefit at age 62 with five or more years of service and reduced deferred benefits at age 55 with 10 or more years of service. Option B provides the same benefits and, also, provides unreduced deferred benefits to former employees who attain age 55 with 30 or more years of service.

The House bill has no comparable provision.

The House committee bill provides a deferred benefit to a former employee who attains age 62 with 5 or more years of service.

The conference agreement adopts the Senate approach which entitles a former employee with sufficient service to benefits when he or she attains the requisite minimum age to be eligible for immediate retirement. The agreement provides entitlement to *unreduced* benefits to former employees who attain age 62 with five or more years of service, age 60 with 20 or more years of service and age 55–57 with 30 or more years of service depending upon the year in which the employee retires. *Reduced* benefits are available to a former employee who attains age 55–57 with 10 or more years of service depending upon the year in which the employee retires. Providing deferred benefits to former employees under the same conditions as immediate benefits to current employees is consistent with the requirements of the Employee Retirement Income Security Act (ERISA) as applied to private pension plans. Additionally, this provision increases career flexibility for Federal employees who leave Government prior to becoming eligible for an immediate retirement benefit.

Involuntary retirement

The Senate amendment provides for involuntary retirement under the same conditions as the CSRS, i.e., if an employee is age 50 with at least 20 years of service or at any age with at least 25 years of service. The employee's benefit is reduced 2 percent for each year the employee is under age 62.

The House bill has no comparable provisions.

The House committee bill provides for involuntary retirement under the same conditions and eligibility requirements as the Senate amendment. However, those eligible for benefits would not face a reduction in their annuities based on age at time of retirement.

The conference agreements adopts the House committee approach. An employee removed from Government involuntarily is eligible to receive an immediate and unreduced benefit if the employee is age 50 with at least 20 years of service or any age with at least 25 years of service.

Annuity supplement

The Senate amendment does not include a supplement to the basic pension for those employees retiring before age 62 except

with respect to special class employees, e.g., firefighters, law enforcement officers, and air traffic controllers.

The House bill has no comparable provision.

The House committee bill does include such a supplement for those retiring at age 55 with 30 years of service or age 60 with 20 years of service, as well as for special class employees.

The conference agreement adopts modified version of the House committee provision. The supplement will be paid to those employees who retire at the minimum retirement age (55–57) with at least 30 years of service, those who retire at age 60 with at least 20 years of service, and those involuntarily separated beginning when they attain the minimum retirement age. The supplement is designed to replicate the Social Security benefit (based on Federal civilian service) available at age 62 for those employees retiring earlier. The supplement terminates once the employee attains age eligibility to receive Social Security benefits, i.e., age 62. The provision in the conference agreement differs from the one in the House committee bill in three respects. First, the formula was redesigned to assume that no Social Security benefits were earned in post-Federal employment. Second, the supplement is not adjusted for inflation. Third, the amount of the supplement actually payable is reduced by earnings in excess of a minimum amount, just as the amount of Social Security benefits payable at age 62 are reduced by earnings in excess of that amount. Earnings in excess of the exempt amount in the Social Security Act (the 1986 amount is $5,760.00 which is wage indexed) will reduce the supplement by one dollar for every two dollars earned. The conferees note that in order to assure continuity of a benefit stream throughout retirement, the suplement is subjected to the same conditions as payment of the Social Security benefit.

Cost-of-living adjustments

The Senate amendment provided for different cost-of-living adjustments (COLAs) for the various benefits depending on the retirement plan option selected. Under Option A, annuitants would receive no COLAs until age 62. For annuitants aged 62 through 66 and for those receiving disability or survivor benefits, the COLA would equal the percentage increase in the Consumer Price Index (CPI) minus two percentage points. At age 67, all COLAs would equal the actual percentage increase in the CPI.

Under Option B of the Senate amendment, annuitants up to age 62 would receive a COLA equal to the percentage increase in the CPI minus 2 percentage points. For annuitants at age 62 and above and for survivors and those disabled at any age the COLA would be the full CPI increase.

The House bill has no comparable provision.

The House committee bill provides for full COLAs for retirees, survivors, and disability annuitants.

Except in the case of special classes of employees, discussed below, the conference agreement provides for no COLA for retirees under age 62. For retirees age 62 and over, and for those receiving disability or survivor benefits regardless of age, the COLA is generally equal to the percentage increase in the CPI minus one percentage point. In those years for which the percentage increase in the

CPI does not exceed 3 percent, the COLA will be the lesser of the increase in the price index or 2 percent.

Special classes

The Senate amendment provides earlier retirement with a supplement to certain classes of employees. The special classes include firefighters, law enforcement personnel, and air traffic controllers. Members of the Foreign Service and certain employees of the Central Intelligence Agency receive similar benefits although they are covered under amendments to their respective systems.

All of these employees may retire with an unreduced benefit at age 50 with at least 20 years of service or at any age with at least 25 years of service. In addition, a supplement is payable from retirement to age 62. Definitions of firefighters and law enforcement officers are more restrictive than under CSRS. Finally, military reserve technicians may retire at age 55 with 30 years of service with an unreduced benefit but without a supplement.

The House bill has no comparable provision.

The House committee bill provides higher accrual rates for law enforcement personnel, firefighters, air traffic controllers, Members of Congress, and congressional staff. The accrual rates are 1.7 percent per year of service for the first 20 years and 1.5 percent for service thereafter. The bill also requires employees in these classes to contribute an additional ½ of one percent of salary to the basic plan. Law enforcement personnel and firefighters (current law definitions) may retire at age 50 with 20 years of service with a supplement. Air traffic controllers may retire at age 50 with 20 years of service or 25 years of service at any age with a supplement. Members of Congress may retire with a supplement after completing 25 years of service or after becoming age 50 and completing 20 years of service or having served in 9 Congresses. In addition, a Member may retire with a supplement at age 60 with 10 years of service.

The conference agreement includes provisions of both the Senate amendment and the House committee bill. The Senate definition of "firefighters" is adopted as well as the definition of "law enforcement officer" (except as it applies to employees of Bureau of Prisons and related agencies). Law enforcement officers, firefighters, air traffic controllers, and Members of Congress may retire at age 50 with 20 years of service or at any age after completing 25 years of service. Law enforcement officers, firefighters, and air traffic controllers receive a supplement beginning at retirement. Members receive such a supplement beginning at the applicable minimum retirement age (55–57). The earnings test described earlier applies to the supplement at the minimum retirement age. These individuals, and congressional employees, contribute an additional ½ of one percent to the basic plan and receive an accrual rate equal to 1.7 percent of average pay for each of their first 20 years of service and 1 percent of average pay for each year thereafter. Members of the Foreign Service and certain employees of the CIA receive similar treatment but are covered under amendments to their respective retirement systems.

The mandatory retirement ages applicable under CSRS for law enforcement officers, firefighters, and air traffic controllers are included in the conference agreement. Because of the mandatory re-

tirement requirements, the benefits for these groups will be adjusted for changes in cost of living, generally, at a rate of CPI minus 1 percent beginning at retirement, rather than at age 62.

To determine a reasonable accrual rate, the conferees used the average age and service at retirement of law enforcement officers in the CSRS and tried to replicate the CSRS replacement rates for such individuals in the retirement provisions of this plan.

Finally, the conference agreement provides that military reserve technicians separated from the civil service because of losing military status through no fault of their own may retire at age 50 with 25 years of service. In such cases the normal accrual rate of 1 percent of average salary per year of service applies and a supplement is paid. Those technicians who lose military status due to physical disability will receive cost-of-living adjustments from the time of retirement equivalent to that discussed above.

Thrift Savings Plan

Contributions

The Senate amendment allows an employee to contribute each year up to 10 percent of the employee's rate of basic pay to the Thrift Savings Fund. It allows for "make-up" contributions in a year following a year in which an employee did not make the maximum contribution. In any year total contributions (including "make-up" contributions) could not exceed 15 percent of the employee's annual rate of pay for that year. The Senate amendment also permits employees to modify the amounts contributed to the Thrift Savings Fund at least once per year.

The Senate amendment provides for matching employer contributions. Under the Senate plan (Option A), the Government would match contributions dollar for dollar up to 5 percent of the employee's pay. Under Option B, the Government matches the first one percent of pay dollar for dollar, the second and third percent at fifty cents per dollar, and the fourth through sixth percent of pay at twenty five cents per dollar. The Senate amendment provides for the employee and employer contributions to the Thrift Fund to be tax deferred. The Senate amendment provides to employees who are receiving disability benefits the option of participating in the Thrift Plan.

The House bill has no comparable provision.

The House committee bill allows employees to contribute up to 10 percent of basic pay. It provides for the employer to match the contribution at fifty cents per dollar up to 6 percent of the employee's basic pay. The House committee bill requires an "open season" at least once every 6 months during which an employee may elect to contribute, elect to cease contributing, or change the rate of contribution. An employee may not begin contributing until the second open season following employment. Under the House committee bill, employees covered by CSRS could also contribute up to 10 percent of pay. Such contributions, however, would not be matched by the Government.

The conference agreement adopts provisions of both the Senate amendment and the House committee bill. Newly-hired employees must wait until the second "open season" to join, a period ranging

from 6–12 months. Employees must be permitted to elect to participate, to elect to cease participating, or to modify the amount of their contributions to the Fund at least once every 6 months. The Executive Director is required to design a plan for make-up contributions and submit it to Congress.

With respect to Government contributions, the conference agreement represents a compromise between the Senate amendment and the House committee bill. The conference agreement provides for the employer to contribute an amount equal to one percent of basic pay for each employee regardless of whether the employee has elected to make contributions. This substantially offsets the mandatory employee contribution to the basic plan. An employee may elect to contribute up to 10 percent of pay with the employer matching up to 5 percent as follows: for the first 3 percent the match is 100 percent and for the fourth and fifth percent of pay the match is 50 percent.

Like the Senate amendment, the conference agreement provides that the employee and employer contributions to the Thrift Savings Fund will be tax-deferred. The House had no provision for tax deferral. Employees under CSRS may contribute a maximum of 5 percent to the Thrift Savings Plan but with no Government matching contribution.

The conferees believe the Thrift Savings Plan is a key element of the new retirement system. It encourages Federal employees to participate actively in their own retirement planning. The automatic 1 percent Government contribution for each employee coupled with the attractive agency matching contribution provides a strong incentive for employees to participate. The tax-deferred features of the plan also make the Thrift Savings Plan economically attractive to employees. These popular tax-deferred savings plans should be as available to Federal employees as they are to private sector employees.

To encourage all Federal employees to participate in retirement planning, the conference agreement follows the House committee bill and allows current CSRS employees to participate in the Thrift Savings Plan. However, the conference agreement does not adopt the Senate amendment provision which permits disabled employees to participate in the Thrift Plan.

Vesting

The Senate amendment provides for immediate vesting of an employee's contributions to the Thrift Savings Plan and earnings attributed to those contributions. It provides for gradual vesting of the Government's contributions (and attributable earnings) over a 5-year period.

The House bill has no comparable provision.

The House committee bill provides for full and immediate vesting of both employee and employer contributions and the attributable earnings.

The conference agreement adopts the House provisions for full and immediate vesting for matching contributions. The automatic one percent contribution discussed above vests after 3 years of service for career employees, and 2 years for political appointees. The

conferees note, however, there is a waiting period before an employee may join the plan.

Payouts

The Senate amendment provides several options under which participants may receive benefits from the Thrift Savings Plan upon leaving Government employment. The options available depend on the participant's retirement status. Those entitled to an immediate basic plan annuity, to workers' compensation benefits, or disability benefits would have four options: (1) an immediate annuity; (2) a deferred annuity; (3) withdrawal of funds in one or more payments; or (4) a rollover to an Individual Retirement Account (IRA) or any qualified pension plan. Those entitled to a deferred annuity would have the same four options, but the first three would be available only after the deferred annuity commences. Those not entitled to an annuity have two options: (1) withdrawal of funds at age 62; or (2) rollover to an IRA or any qualified pension plan.

The House bill has no comparable provision.

The House committee bill provides that an employee, upon separation from employment, may withdraw his account, receive an annuity or receive a deferred annuity.

The conference agreement adopts the Senate amendment provisions with modifications. If eligible to retire from the basic plan, an employee may withdraw the account, receive an annuity, defer an annuity, or transfer the account into an IRA or any qualified pension plan. If the employee separates with title to a deferred annuity under the basic plan, the employee may elect any of the above options except that withdrawals may not be made until the employee is eligible to receive the deferred annuity under the basic plan. If the employee is not vested in the basic plan, the account is required to be transferred into an IRA or any qualified pension plan.

Loans

The Senate amendment authorizes a loan program beginning in January 1, 1988, limited to the employee's contributions and attributable earnings.

The House bill has no comparable provision.

The House committee bill authorizes loans or hardship withdrawals of employee contributions for the following purposes: (1) purchase of a primary residence; (2) educational expenses; (3) medical expenses; or (4) financial hardship.

The conference agreement adopts the House committee provisions on loans except that loans will not be permitted prior to January 1, 1988. Withdrawals during employment are not permitted.

Investment of thrift savings fund

The Senate amendment provides for a minimum of three funds for investment: A Government Securities Investment Fund, a Fixed Income Investment Fund, and a Common Stock Index Investment Fund. It provides for a 5-member board to establish additional funds as appropriate. The Senate amendment includes certain re-

quirements for the index fund and requires the board to define the stock index.

The Senate amendment provides for employees to have the opportunity at least once each year to elect the funds for investment or reinvestment. It includes a requirement that all monies contributed by employees to the Thrift Savings Plan during 1987 would be invested in the Government Securities Investment Fund with a 20 percent reduction of this amount each year through 1991. With respect to amounts contributed by the Government, 100 percent would remain in the Government Securities Investment Fund for the 6-year period, 1987–1992. In 1993, 20 percent would be available for investment in other funds increasing by 20 percent each year through 1996.

The House bill has no comparable provisions.

The House committee bill provides for a total of 6 funds for investment. In addition to the 3 included in the Senate plan, the House also provides for an indexed bond fund, an actively managed stock fund, and an actively managed bond fund. It provides for employee elections for allocating investments among funds at the same time as elections to participate in the Thrift Savings Plan (at least once every six months). The House committee bill provides for all Government contributions prior to 1992 to be invested in the Government Securities Investment Fund.

The conference agreement adopts the Senate provisions establishing three funds and gives the Board the responsibility to select the index for the Common Stock Index Investment Fund. The conferees chose to limit the number of funds to three for several reasons. Because this is a new undertaking in the Federal Government, a smaller number of funds will be more manageable. The three funds selected offer employees distinct and reasonable alternatives for investment. Should additional investment vehicles become desirable, the Congress can authorize them.

Most importantly, the three funds authorized in the legislation are passively managed funds, not subject to political manipulation. A great deal of concern was raised about the possibility of political manipulation of large pools of thrift plan money. This legislation was designed to preclude that possibility.

Concerns over the specter of political involvement in the thrift plan management seem to focus on two distinct issues. One, the Board, composed of Presidential appointees, could be susceptible to pressure from an Administration. Two, the Congress might be tempted to use the large pool of thrift money for political purposes. Neither case would be likely to occur given present legal and constitutional restraints.

The Board members and employees are subject to strict fiduciary rules. They must invest the money and manage the funds solely for the benefit of the participants. A breach of these responsibilities would make the fiduciaries civilly and criminally liable.

The structure of the funds themselves prevents political manipulation. The Government Securities Investment Fund is invested in nonmarketable special issues of the Treasury pegged to a certain average interest rate. The Fixed Income Investment Fund is composed of guaranteed investment contracts, certificates of deposits or other fixed instruments in which the Board contracts with insur-

ance companies, banks and the like to provide it with a fixed rate of return over a specified period of time. The Board would have no knowledge of the specific investments.

Finally, the stock index fund is one in which a common stock index such as Standard & Poor's 500 or Wilshire's 5000 is used as the mechanism to allocate investments from the fund to various stocks. A common stock index is a composite of stocks which moves up and down in value as prices of the stocks change. An index fund then allocates its investments to the stocks in the index in the same or similar ratio that the value of a given stock has to the total value of all of the stocks in the index. Thus, the actual decision to buy or sell a given stock is determined by the market place, i.e., the ratio of values of stock within the index. As the relative values change, the investments from the fund change. Hence no individual or group of individuals are capable of manipulating investments. The legislation bars Board members, the Executive Director and employees from voting proxies owned by the stock index fund.

The investment approach chosen by the conferees is patterned after corporate, state and local government, and the few existing Federal pension funds. Political manipulation is unlikely and would be unlawful.

As to the issue of Congress tampering with the thrift funds, the inherent nature of a thrift plan precludes that possibility. Unlike a defined benefit plan where an employer essentially promises a certain benefit, a thrift plan is an employee savings plan. In other words, the employees own the money. The money, in essence, is held in trust for the employee and managed and invested on the employee's behalf until the employee is eligible to receive it. This arrangement confers upon the employee property and other legal rights to the contributions and their earnings. Whether the money is invested in Government or private securities is immaterial with respect to employee ownership. The employee owns it, and it cannot be tampered with by any entity including Congress.

Drawing parallels between corporate reversions from overfunded pension plans and state legislative initiatives to use state pension monies for certain political purposes is irrelevant in this case. These examples are of funded defined benefit plans where the monies do not belong to the employees but, rather, are arrangements to fund a statutory or contractual benefit. In this case, the vested monies of the thift plan belong to the employees.

Because of the many concerns raised, the conferees spent more time on this issue than any other. Proposals were made to decentralize the investment management and to give employees more choice by permitting them to choose their own financial institution in which to invest. While the conferees applaud the use of IRAs, they find such an approach for an employer-sponsored retirement program inappropriate. In fact, the conferees received advice from the Department of the Treasury that such a plan would not even qualify as an employer-sponsored plan, thus losing its favorable tax treatment.

The conferees concur with the resolution of this issue as discussed in the Senate report (99-166) on this legislation:

As an alternative the committee considered permitting any qualified institution to offer to employee specific investment vehicles. However, the committee rejected that approach for a number of reasons. First, there are literally thousands of qualified institutions who would bombard employees with promotions for their services. The committee concluded that employees would not favor such an approach. Second, few, if any, private employers offer such an arrangement. Third, even qualified institutions go bankrupt occasionally and a substantial portion of an employee's retirement benefit could be wiped out. This is in contrast to the diversified fund approach which could easily survive a few bankrupticies. Fourth, it would be difficult to administer. Fifth, this "retail" or "voucher" approach would give up the economic advantage of this group's wholesale purchasing power derived from its large size, so that employees acting individually would get less for their money.

The conference agreement adopts the Senate amendment provision for phasing employee and employer contributions into the private sector investment options with one change. At the end of the first five-year period employees could invest all of their contributions in any fund. After the 10-year period employees may invest all of the Government contributions in any fund. The conference agreement provides for employees to elect investment vehicles twice each year, simultaneous with the option to change contribution rates. Contributions by individuals under CSRS must be held in the Government Securities Investment Fund.

Federal retirement thrift investment management system

The Senate amendment establishes an off-budget agency called the Federal Retirement Thrift Investment Board to handle the investment and administraiton of the thrift plan. The Board's operations are funded by forfeitures of Government contributions and the invesment income from its investments. Board members are the Chairman of the Federal Reserve Board, the Director of the Office of Personnel Management, the Secretary of the Treasury, and two Presidentially-appointed employee representatives, one from labor and one from a manager organization. The Board sets overall policy, which is administered by an executive director and a support staff. An advisory committee of private sector experts advises the Board on investments and administration while a specially elected employee advisory committee advises in investment decisions and votes the fund's shares in relevant corporate matters. The Secretary of Labor is responsible for enforcing fiduciary responsibilities similiar to those required by ERISA.

The House bill has no comparable provision.

The House committee bill establishes an off-budget agency called the Federal Retirement Investment Board to handle the investment and administration of the thrift plan, which is funded by investment income from its investments. The Board is composed of five members, appointed by the President for four year terms, one of whom is designated as Chairman. One appointment is on recom-

mendation of the Speaker of the House, one on recommendation of the Senate Majority Leader, and the final one upon recommendation of the other four. The Board sets overall policy, which is administered by an executive director and a support staff. The Chairman appoints a 14 member Employee Thrift Advisory Council representing labor, management, women, and retiree organizations. One member is designated by the Chairman as head of the Council and appointments are for four years. The Council advises the Board on investment and administration of the Thrift Savings Fund. The Secretary of Labor is responsible for enforcing fiduciary responsibilities similar to those required by ERISA.

The conference agreement generally adopts the House committee provisions. Board appointees must be confirmed by the Senate with the exception of those appointed for the first term. Unlike most of the rest of the retirement plan, the Thrift Management System is effective upon date of enactment to ensure that the system will be operable when thrift plan participation begins on January 1, 1987. As a result the conference agreement empowers the President to appoint the first panel of Board members for a one year term without Senate confirmation. Subsequent appointments are subject to Senate confirmation. In addition, while the Senate and House will each make a recommendation for appointment, the President need only take such a recommendation into consideration for such an appointment. With regard to advisory groups, the conferees decided that the requirement for Board members and the Executive Director to have substantial expertise in managing financial investments and pension benefit programs would obviate the need for advice from a committee of private sector experts.

Survivor Benefits

Preretirement Death

The Senate amendment (Option A) provides a preretirement death benefit to a survivor equal to 50 percent of the accrued retirement benefit of the employee subject to applicable early retirement reductions. Option B provides a benefit equal to 50 percent of the unreduced retirement benefits. A minimum benefit is provided under both options, based on 10 years of service. Option B also provides enhanced life insurance until retirement. Benefits are payable to survivors of vested employees who separated prior to death. Benefits vest after 18 months of service.

The House bill has no comparable provision.

The House committee bill provides a benefit equal to 50 percent of the accrued annuity of the employee where Social Security is payable. If Social Security is not payable, the benefit is the lesser of (a) the current CSRS benefit or (b) 50 percent of the accrued annuity, plus a Social Security supplement. Benefits vest after 18 months of service.

The conference agreement provides a surviving spouse a lump sum payment of $15,000 (indexed to CPI) plus one-half of the employee's annual rate of pay or high-3 average pay if higher. The spouse may elect the lump sum to be paid as an annuity or to be paid out over a shorter period. In addition, the surviving spouse receives an annuity equal to 50 percent of the employee's accrued un-

reduced annuity if the deceased employee had 10 years of service. Benefits vest after 18 months of service. Benefits are payable to survivors of vested employees who separated prior to death.

To the extent practical, the conference agreement reflects survivor benefit practice. Private industry uses a mixture of life insurance and survivor annuities. These coupled with Social Security survivor benefits generally provide adequate benefits. The conferees considered using a combination of insurance and annuities but found this approach would require significant changes in the Federal Employees Group Life Insurance (FEGLI) program. The conferees were not prepared to address significant changes in FEGLI at this time. Instead, the conference agreement approximates private sector insurance practice by providing an option of a lump sum payment. This should improve the ability of survivors to meet the financial demands resulting from the loss of a spouse. As a result of these survivor provisions, basic life insurance coverage may be redundant in some circumstances. The conferees urge the Office of Personnel Management to immediately study the impact of these provisions on FEGLI and recommend appropriate changes to the basic life insurance program.

Postretirement death

Both options under the Senate amendment require a 10 percent "survivor" reduction in the basic annuity to provide post retirement survivor benefits. A joint waiver is required for alternate annuity forms. Under Option A the survivor is entitled to 50 percent of the retiree's annuity, including any early retirement reductions. If the survivor predeceases the annuitant, the survivor reduction is not restored. Under Option B the survivor is entitled to 50 percent of the accrued annuity without early retirement reductions. If the survivor predeceases the annuitant, the survivor reduction is restored.

The House bill has no comparable provision.

The House committee bill requires a survivor reduction equivalent to that required under CSRS. This reduction is made unless the retiree and spouse jointly waive the survivor option. If Social Security is payable, the benefit is equal to 50 percent of the retiree's unreduced annuity. If Social Security is not payable, the benefit is the lesser of (1) the current CSRS benefit or (2) 50 percent of the retiree's unreduced annuity plus a Social Security supplement payable until Social Security eligibility. If the survivor predeceases the annuitant, the survivor reduction is eliminated.

The conference agreement requires a survivor reduction of 10 percent (absent a joint waiver). The remainder of the provisions are adopted from the House committee bill.

Children's benefits

The Senate amendment has no provision.

The House bill has no provision.

The House committee bill provides children's benefits equivalent to those under the current CSRS offset by any Social Security benefits payable.

The conference agreement adopts the House committee approach.

Disability Benefits

The Senate amendment establishes a separate long-term disability (LTD) insurance plan which pays benefits to a disabled employee with at least 18 months of service after the employee has used all sick leave. A totally disabled employee receives 60 percent of average salary offset by 100 percent of the Social Security benefit if any. For an individual who does not meet the Social Security disability definition, but who is disabled for his or her occupation, the benefit decreases to 40 percent of average salary after the first year. The benefit continues until the individual recovers or is converted to the regular retirement rolls. Occupationally disabled individuals are converted at age 55 and the totally disabled at age 62.

Time spent on the disability rolls is credited as service for purposes of the basic retirement benefit formula. In addition, the employee's salary at onset of disability is adjusted upward to the time of conversion. While receiving benefits, individuals are subject to medical examinations and to reviews of earnings. The portion of the disability benefit cost which comes from the LTD plan is paid by agencies to a newly established Federal Employee's Disability Insurance Fund. Benefit payments are made by a third party administrator.

The House bill has no comparable provision.

Under the House committee bill an employee who completes at least 5 years of creditable civilian service and is found by OPM to be unable to perform the duties of such employee's position will be eligible for disability retirement and an annuity. The disability annuity will be equal to the employee's accrued retirement benefit but will be no less than the smaller of (1) 20 percent of the employee's average pay, or (2) an annuity computed under the regular annuity formula after projecting the employee's service to age 60. Disabled employees who are unable to perform the duties of their positions but who do not qualify for benefits under the stricter Social Security definition of disability will be entitled to receive an annuity supplement to make up for the lack of Social Security benefits.

The conference agreement includes provisions from both the Senate amendment and the House Committee bill. Like the House committee bill, the disability benefit will be paid as an annuity from the retirement fund. The conference agreement adopted the Senate provision regarding eligibility for benefits after 18 months of service. The amount of the benefit during the first year is 60 percent of average pay minus 100 percent of any Social Security benefit payable. After the first year, the benefit for the occupationally disabled is 40 percent of average pay. For the totally disabled a 40 percent of average pay disability benefit is offset by 60 percent of the Social Security benefit payable. Total income flowing from both the disability benefit and Social Security will range from approximately 58 percent of average pay for the low income down to 46 percent for the higher income.

At age 62 the annuity is recomputed and the annuitant will receive the lesser of the total disability benefit (regardless of the extent of the disability) or a recomputed retirement benefit. For the retirement recomputation, years spent on disability are counted as years of service and average pay is increased by the cost of

living adjustments applicable to disability annuities during the period of disability.

The disability benefit is particularly complex due to the need to coordinate with Social Security benefit computation formulas and disability criteria. The Social Security definition of disability is a very strict definition. Both bills provide and the conferees concur that payment of benefits is warranted where an employee is disabled for his position (occupationally disabled) but does not qualify for Social Security benefits. As a consequence, two categories of disabled employees receive benefits. In both cases a reasonable benefit is necessary, but the benefit payable to the Social Security disabled must take into account the amount of the Social Security benefit to avoid being overly compensated. Thus, one recipient receives a benefit only from the plan while the other receives it from the plan and Social Security.

The tilt to lower-income employees in total disability cases results from the tilt to lower-income employees in the Social Security benefit formula. The offset formula utilized for the totally disabled flattens the tilt somewhat.

Conversion to retirement benefits, if lower, at age 62 is necessary to assure that the disabled person does not receive greater benefits in his retired years than the one who voluntarily retired from active employment. Finally, at the time of conversion, the occupationally disabled individual is deemed to receive the total disability amount for conversion purposes to prevent the occupationally disabled from receiving more in total income than the totally disabled, once old age benefits commerce from Social Security.

Transfers from CSRS to the FERS

The Senate amendment permits individuals covered by the CSRS, including those covered by both Social Security and CSRS, to elect to join the new plan within one year after the effective date, which is January 1, 1987. Rules which apply in the case of a transfer include:

(1) Service both before and after the transfer counts for eligibility to retire.

(2) Increases in average salary after the transfer apply to benefit computations under both plans.

(3) Survivor benefits come from both plans.

(4) Disability coverage under CSRS stops and the employee gets credit for service before the transfer toward the 18 months needed to become eligible for long term disability benefits under the new plan.

(5) Service before the transfer counts for vesting in the Government's share of contributions to the thrift plan.

(6) Employees who transfer and remain in the new plan for five years are no longer subject to the windfall benefit reduction or the public pension offset rule applying to spouses under the Social Security Act.

The House bill and the House committee bill have no comparable provision.

The conference agreement adopts the Senate amendment approach, (with the exception of item six above) and permits employ-

ees under CSRS to transfer into the new system. Generally, an election to transfer may not be made prior to July 1, 1987, nor after December 31, 1987.

Individuals covered by CSRS only may transfer to the new plan. Those individuals covered by CSRS on December 31, 1983, but who were subsequently covered by Social Security may transfer into the new plan. Those individuals who performed 5 years of civilian service creditable under CSRS, who separated and who later were rehired subject to Social Security may transfer into the new plan during the later of the six-month period following reemployment or the six-month election period described above. Reemployed annuitants retired under CSRS may transfer into the new plan.

Rules applicable to transfer regarding creditability of service, vesting, average pay, and disability benefits are essentially the same as under the Senate amendment. New rules include:

(1) Military service performed before the effective date of the transfer generally is not creditable under FERS except in determining eligibility for benefits.

(2) Cost-of-living adjustments for the portion of the annuity earned before the transfer will be under the CSRS formula; the portion earned after the transfer will be under the FERS formula. COLAs for children's benefits will be under the FERS formula.

(3) Sick leave credited as service for benefit computation purposes under CSRS will be the number of days credited at the time of transfer or the date if retirement, whichever is less.

(4) A supplement for retirees with 30 years of service who are between age 55 and 62 is computed on service after the date of the transfer.

(5) A transfer election is effective with the first pay period beginning after the date of election and is irrevocable.

(6) An individual who elects to transfer and who has a former spouse entitled to CSRS benefits based on a court order or court-approved property settlement must have the written consent of the former spouse before the election can be effective.

(7) Service in CSRS is counted for purposes of survivor benefits under FERS. Survivor benefits are paid only under FERS.

The conferees agreed that individuals with at least 5 years creditable service in CSRS who return after more than a one year break in service should retain entitlement to CSRS benefits unless they elect to be covered by FERS benefits.

Finally, the conference agreement provides that anyone who transfers into the new plan will be covered by Social Security prospectively.

Interim Employees

The Senate amendment provides that individuals hired or rehired after 1983 and who were covered by the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 receive service credit in the new plan beginning on the date of such hiring or rehiring. CSRS retirement contributions made by these individuals, together with a Government contribution and interest on both, are used to establish a thrift savings account for the individual.

The House bill has no comparable provision.

The House committee bill provides that (1) individuals covered by both CSRS and Social Security, and (2) individuals reemployed after more than a one year break in service who have at least five years of civilian service covered by CSRS are credited under the CSRS with covered interim service without additional deposit requirements. These individuals remain under revised CSRS benefit and contribution formulas.

Employees hired during the interim period or rehired with less than 5 years service are given service credit in the new plan for all service under CSRS or the interim system, without regard to deposit requirements.

The conference agreement essentially adopts the provisions of the House committee bill relating to individuals covered by both CSRS and Social Security and those individuals vested in CSRS and rehired during the interim period. They remain under CSRS under revised benefit and contribution formulas. Those employees hired during the interim period or rehired with less than 5 years civilian service are given service credit in the new plan but an appropriate deposit is required if that service is not covered by contributions. In addition, the Government will deposit in the Thrift Savings Fund on behalf of those employees 1 percent of basic pay paid during periods of employment under the interim system (with interest).

Treatment of Certain Individuals Covered Under CSRS and Social Security

The Senate amendment provides that individuals employed continuously since December 31, 1983, who were covered by Social Security, retain coverage under CSRS under a revised formula. These employees include Members of Congress and political appointees at the Senior Executive Service level and above.

The House committee bill provided similar treatment for those employees covered by the Senate amendment as well as employees rehired subject to Social Security who were vested in CSRS.

The conference agreement adopts the House provisions. The affected employees will be covered under both CSRS and Social Security. They will pay the full OASDI tax and a reduced contribution to the Civil Service Retirement Fund. The reduced contribution will be an amount equal to the difference between the full CSRS contribution applicable to the covered employee and OASDI tax.

These employees will be entitled to full Social Security benefits and a reduced Civil Service annuity. The Civil Service annuity will be reduced by the amount of the Social Security benefit attributable to Federal service.

Service during the interim period is creditable in the same manner. Employees who contributed the full CSRS amount during the interim period will be refunded the difference between the amount they contributed and the offset amount. Those employees who were permitted to make full contributions to both plans may continue to do so, thereby avoiding the offset provisions.

Extension of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983

The Senate amendment extends the provisions of the Act until January 1, 1987, thereby extending the interim retirement system until that date.

Neither the House bill nor the House committee bill has a comparable provision.

The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, as enacted, was to expire on December 31, 1985. Its life was extended until April 30, 1986, by section 147 of Public Law 99–190. The Act did expire on April 30 thereby requiring increased retirement contributions by those Federal employees subject to Social Security.

The conference agreement retroactively extends the Act from April 30, 1986, until December 31, 1986, at which time the new Federal Employees' Retirement System takes effect. It further authorizes refunds of excess retirement contributions required between April 30, 1986, and the date of the enactment of the conference agreement.

Authorization, Application, and Effective Dates

The Senate amendment provides for payment of the fiscal year 1986 and 1987 expenses of the Federal Retirement Thrift Investment Board for appropriations, authorizes a $1 million appropriation for OPM to perform required informational activities, and makes the FERS effective Janaury 1, 1987, except for the thrift management system, which is effective on date of enactment, and the thrift loan program, which must be established by January 1, 1988.

The House bill has no comparable provision.

The House committee bill has provisions comparable to the Senate amendment regarding payment of thrift fund administrative start up costs and effective dates. It does not authorize an appropriation for informational activities. It provides that for purposes of the first cost-of-living adjustment under the new retirement system, the base quarter ending on September 30, 1986, shall be considered to have been the base quarter for a year in which a cost-of-living adjustment under such system was made.

The conference agreement adopts the House committee bill provisions.

Disclosure of Return Information

Under current law, section 6103 of the Internal Revenue Code provides that income tax returns and return information shall be confidential except for certain limited cases specifically set forth in that section.

The Senate amendment provides that the Office of Personnel Management shall have access to any information in the possession of any government agency that is necessary for administration of the retirement system.

The conference agreement provides that the Commissioner of Social Security will disclose to the Office of Personnel Management

return information concerning net earnings from self-employment, wages, and payments of retirement income that have been disclosed to the Social Security Administration (SSA) under IRC section 6103. Only that information which is strictly necessary for the administration of the retirement system as provided in chapters 83 and 84 of title 5, United States Code may be disclosed under this section, and only according to written agreement between SSA and OPM, with such consultation with the Department of the Treasury as may be necessary.

The conference agreement also provides for reimbursement to the Social Security Administration (through the Department of Health and Human Services) for the costs of providing return information, as well as for the costs of providing any other information, such as hypothetical benefit computations, that may be required under agreements between Social Security Administration and the Office of Personnel Management.

FOREIGN SERVICE RETIREMENT

Title IV of the bill establishes a Foreign Service Pension System (FSPS) to provide retirement benefits for members of the Foreign Service appointed after 1983. FSPS parallels the Federal Employees' Retirement System (FERS) established by Title I of the bill for newly appointed Civil Service employees.

Members of the Foreign Service who are or who become participants in FSPS are made subject to all the provisions in chapter 84 of title 5, United States Code. Code (FERS) unless specifically provided otherwise in title IV of the bill. Different treatment for the Foreign Service is provided to permit continued operation of its special personnel system with its up-or-out and rank-in person rather than rank-in-position features and continued administration of the system by the Secretary of State. The special features incorpated in the FSPS are comparable to the special features in the FERS for personnel also eligible for age 50 retirement such as law enforcement, firefighter and air traffic controller personnel.

SENATE AMENDMENT

The Senate amendment established a Foreign Service Pension System (FSPS). The new System would provide retirement benefits for members appointed after 1983, and is very similar to the Federal Employees' Retirement System (FERS) established by the bill for new appointees in the Civil Service after 1983. All Foreign Service members who become participants in the FSPS would be subject to all provisions of the comparable FERS unless specifically provided otherwise by law. All the exceptions are stated in the Senate amendment.

The Foreign Service (FS) has always had its own retirement system separate from the Civil Service Retirement System. The basic reason for this is that the FS needs special provisions for early retirement to permit operation of its up-or-out personnel system. A number of FS members are mandatorily retired every year to permit advancement of the more competitive and most able personnel. This system was endorsed and expanded by the Foreign

Service Act of 1980. The special provisions are also necessary to permit the early retirement of members who, for various reasons, are no longer able to serve abroad after completing a career in dangerous and difficult environments.

The FSPS proposed in the Senate amendment would preserve the early retirement and other special features needed by the FS. It would permit members to retire voluntarily at age 50 with 20 or more years of service with the same benefit as provided for special category personnel such as law enforcement, firefighter, and air traffic controller personnel. The system would permit FS members who are retired mandatorily at an early age to receive the "mid-tier" benefit based on high-5 salary without penalty for early retirement. The third basic special provision would provide an annuity supplement equivalent to a Social Security benefit from the date of retirement to age 62 when the annuitant would be eligible for the actual Social Security benefit. This annuity supplement would be based on all creditable service.

A detailed analysis of the Senate amendment follows:

Title V of the Senate amendment consisted of 7 sections:

Section 501 amends chapter 8 of the FSA of 1980 which contains the authority for the existing Foreign Service Retirement and Disability System (FSRDS), to designate the existing portion as "Subchapter I" and to make conforming amendments to change the word "chapter" wherever it appears in chapter 8 to "subchapter", and "act" to "subchapter" in certain cases.

Section 502 amends section 805 of the Foreign Service Act of 1908, relating to deductions from a participant's pay for Foreign Service Retirement and Disability System (FSRDS) coverage. An employee who was covered by the FSRDS on December 31, 1983, and who was subsequently covered by Social Security will continue in the FSRDS at a reduced contribution. The contribution to FSRDS will be equal to the excess of the employee's normal FSRDS contribution over the OASDI portion of the Social Security tax.

Section 503 amends section 806 to require that annuities of retirees and survivors under the current FSRDS who are entitled to Social Security benefits for Federal service have their annuities reduced at age 62 in a manner comparable to the amendment to 5 U.S.C. 8339(o) made by the Senate amendment.

Section 504 amends existing section 823 which deals with retirement benefits of retired FS members who are recalled to active duty. The amendment provides that members who are recalled in the future and whose recall service comes under the new FS Pension System will receive the same benefits as reemployed annuitants.

Section 505 restates existing section 834 which concerns reemployed annuitants. The FS has long had a distinctive rule on reemployed annuitants to permit use of retired members who are uniquely qualified to perform certain essential tasks. This amendment recognizes that some reemployed annuitants will have an annuity under both the new and old systems. It also recognizes that it would be difficult or inappropriate to recompute a FS annuity following employment under the new Federal Employees' Retirement System. Accordingly, the amendment proposes, in such situations, to provide an additional annuity computed under Subchapter B,

based on salary and service during reemployment in lieu of recomputation. Section 506 amends section 827 to extend the existing "Executive Order" procedure for maintaining conformity between the CS and FS retirement systems to the new FERS and FSPS.

Section 507 is the major substantive amendment. It establishes as subchapter II of chapter 8 of the Foreign Service Act of 1980, the FSPS. Section 851 of the new subchapter provides that participants in the new FSPS shall be subject to all provisions in chapter 84 of title 5, United States Code governing FERS except where otherwise specifically provided by law.

Section 852 provides definitions of the following terms: Annuity, dynamic assumption, Fund, normal cost, participant, supplemental liability, and System.

Section 853 provides that all members of the FS whose service after 1983 brings them under Social Security and who would, save for this section, be participants in the FSRDS, shall be participants in the FSPS.

Section 854 provides special rules governing entitlement to annuity under FSPS. Any entitlement or requirement not mentioned here would automatically, pursuant to section 851, be governed by chapter 84 of title 5, United States Code.

Subsection 854(a) provides that members retiring voluntarily or mandatorily under the conditions of existing sections 607, 608, 811 or 813 receive an annuity computed under proposed new section 8413 applicable to "special category" personnel in the Civil Service.

Subsection 854(b) provides that those retired under subsection (a) above, will be entitled to an annuity supplement from the effective date of retirement to age 62 based on total creditable service of the member and computed under section 8413(b) of title 5.

Subsection 854(c) makes participants in the new system subject to existing provisions for voluntary and mandatory retirement of existing sections 811, 812 and 813.

Subsection 854(d) carries forward to the new system the provision denying pension benefits to a member separated on grounds of disloyalty to the United States.

Section 855 along with the definition of "Fund" in section 852 provide that all monies to finance the System shall be paid into the exsiting Foreign Service Retirement Fund and benefits paid out of that fund. Financing arrangements would exactly parallel those for the FERS, except that the Department of Treasury would provide actuarial services for the FSPS, as at present with respect to the FSRDS.

Section 856 provides that the Secretary of State in consultation with the Medical Director of the Foreign Service, rather than an administrator of benefits under chapter 84, of title 5, United States Code, shall make determinations of disability as affected by fitness for overseas service for purposes of subchapter V of such chapter 84.

Section 857 provides that the Secretary of State shall administer the FSPS exclusive of matters pertaining to Disability and the Thrift Savings Plan. These would be administered in accordance with subchapters II, V and VIII, chapter 84 of title 5, United States Code, except as provided in section 856, as explained above.

Section 858 provides for transition from the old system to the new. The transition provisions are comparable to those applicable to CSRS employees.

Section 859 provides that references in certain paragraphs of the Senate amendment to participation in the Federal Employees' Retirement System shall be deemed to include participation in the Foreign Service Pension system.

CONFERENCE AGREEMENT

Title IV of the conference agreement follows the Senate amendment with minor or conforming changes except that provisions under title I relating to law enforcement officers are generally applicable and except as noted below:

Definition of court

Section 403 of the conference agreement revises the definition of "court" in the Foreign Service Act to make it comparable to the definition added to chapter 83 of title 5 by P.L. 98-615. The revised definition permits the recognition of orders by territorial and Indian courts affecting the payment of retirement and survivor benefits to former spouses.

18-month period to elect survivor annuity

Section 407 of the conference agreement amends the Foreign Service Act to grant annuitants under the existing Foreign Service Retirement and Disability System an 18-month grace period to elect or increase a survivor benefit for a spouse to whom married at retirement. This amendment is comparable to an amendment of chapter 83 of title 5 by P.L. 99-251.

Alternate forms of annuities

Section 408 of the conference agreement amends the Foreign Service Act to provide participants in the existing Foreign Service Retirement and Disability System alternate forms of annuities actuarially equivalent to whole life annuities now provided. This amendment is comparable to the amendment to chapter 83 of title 5 made by section 204 of the conference agreement.

Moderation of remarriage penalty

Section 412 of the conference agreement amends the Foreign Service Act retroactively to November 8, 1984 to moderate the remarriage penalty affecting former spouses, surviving spouses and former spouses of members of the Foreign Service. The amendment permits continuation of benefits or retention of entitlement to benefits if a remarriage occurs on or after age 55 rather than age 60 as at present. The amendment is comparable to the amendment made to chapter 83 of title 5 by P.L. 98-615 effective November 8, 1984.

Former spouses

Sections 861 and 862 being added to the Foreign Service Act by section 415 of the conference agreement as a part of the new Foreign Service Pension System conform that System with existing provisions on former spouses added to the Foreign Service Retire-

ment and Disabilities System by the landmark Foreign Service Act of 1980. These sections do two basic things: first, with respect to certain former spouses, section 861 mandates a pro-rata share division of retirement and survivor benefits when a different distribution has not been ordered or approved by a court or agreed to by the parties. Secondly, section 862 authorizes a participant in the new System to "contract" with his or her spouse or former spouse on a mutually agreed upon distribution of benefits under the System. The purpose of section 862 is to allow the parties to arrange for a mutually agreed upon distribution of retirement benefits without going to court.

Section 861 would apply only to a former spouse married to a participant during 10 years of creditable service with at least 5 of those years occurring while the participant was an active member of the Foreign Service. This is comparable to the 10-year marriage requirement now in chapter 8 of the Foreign Service Act. Distributions under the Foreign Service Pension System to former spouses other than pro-rata share distributions under section 861 will be governed by provisions in chapter 84 of title 5 applicable to former spouses of employees under the Federal Employees' Retirement System. Those benefits will be available to former spouses as defined in that chapter: married 9 months to an individual with 18 months of civilian service credit.

Subsection 861(d) covers the situaton where a member becomes entitled to benefits under both the Foreign Service Retirement and Disability System and the Foreign Service Pension System and has a former spouse at the time of transfer to the latter System. In the common situation where benefits are apportioned pursuant to a court order or spousal agreement, the intent may be to provide a pro-rata share distribution but the language of the instrument may base the share on length of the marriage during service creditable only under the Retirement System, and not under the Pension System. This will provide an especially large share of the Retirement System benefits. If such an order or spousal agreement is not amended, it would not be fair to provide, under this section, an additional pro-rata share of pension system benefits to the former spouse. The purpose of subsection (d) is to prohibit this possibility.

Similarly, in the case where a former spouse is entitled to a pro-rata share of Retirement System benefits based on years married during the entire Government career, it would be unfair not to provide the former spouse the same share of Pension System benefits. Subsection (d) serves this purpose. A related amendment is made to existing sections of the Act by section 404 of the conference agreement. The purpose is to assure that two former spouses married for the same period to members who have identical careers, one of whom transfers to the new Pension System and the other remains under the old Retirement System, will each receive the same share of benefits under this chapter, if payments are based on pro rata share distributions.

CENTRAL INTELLIGENCE AGENCY RETIREMENT

Title V of the conference agreeement addresses federal employee retirement benefits for officers and employees of the Central Intelligence Agency (CIA). One section of Title V also addresses a related matter involving very limited numbers of National Security Agency (NSA) employees and Defense Intelligence Agency (DIA) employees.

After enactment of the Federal Employees' Retirement System Act of 1986, employees of the Central Intelligence Agency will generally fall into four basic categories, each with differing retirement benefits and obligations:

(1) *CSRS participants.*—Most Central Intelligence Agency employees whose federal service began before December 31, 1983 participate in the Civil Service Retirement System maintained under subchapter III of chapter 83 of title 5, United States Code. These CIA employees enjoy the same benefits as federal employees in other agencies who participate in the Civil Service Retirement System.

(2) *CIARDS participants.*—In 1964, Congress enacted the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) to establish a CIA Retirement and Disability System (CIARDS) for CIA employees whose duties are "(i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment" (Sec. 203 CIA, Retirement Act). The CIA employees participating in the CIARDS receive retirement benefits superior to those provided generally by the CSRS, benefitting in particular from a higher annual pension accrual rate and an option for early retirement. The group of CIARDS participants will consist of CIA employees whose federal service began prior to December 31, 1983 who are, or who will become eligible (whether before, on or after December 31, 1983), to participate in CIARDS in accordance with the CIA Retirement Act and implementing regulations.

(3) *FERS regular participants.*—Central Intelligence Agency employees whose federal service began after December 31, 1983 will participate in the Federal Employees' Retirement System (FERS) established under the new chapter 84 of title 5, United States Code. Unless they fall within the special category of CIA employees who qualify for FERS treatment equivalent to that accorded law enforcement officers, the CIA employees covered by the FERS will incur the same obligations and receive the same benefits as do most federal employees covered by the FERS.

(4) *FERS section 203 criteria participants.*—The CIA employees whose federal service began after December 31, 1983 (and who therefore participate in the FERS) and who meet the criteria prescribed under section 203 of the CIA Retirement Act, namely that their CIA duties are "(i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment," will incur the same obligations and receive the same benefits as do federal employees covered by the FERS who are law enforcement officers. The FERS accords preferential bene-

fits to law enforcement officers in comparison to most other types of federal employees, and thus CIA's FERS section 203 criteria participants will receive preferential benefits in comparison to CIA FERS regular participants.

The conferees agreed that, to improve the security of intelligence sources, methods and activities, the CIA should administer all federal retirement systems as they apply to CIA officers and employees. The conference agreement provides for such CIA administration. Providing for CIA administration of retirement systems as they apply to CIA employees reduces unnecessary dissemination within the government of intelligence personnel information, improving security. The administration of the retirement systems by CIA as to CIA employees will not differ substantively from OPM administration of such systems with respect to other federal employees. The benefits and obligations of CIA employees and non-CIA employees within a retirement system will not differ; only the agencies administering the sytem as to those employees will differ. As a result of provisions of the conference agreement providing for CIA administration of the CSRS and the FERS with respect to CIA employees, all aspects of retirement system administration with regard to CIA employees will remain completely within the CIA, except for Merit Systems Protection Board and federal court review of certain adverse retirement decisions made by the DCI with respect to CIA CSRS and regular FERS employees. The conferees expect the MSPB and the federal courts to conduct such proceedings in a manner consistent with the protection of intelligence sources, methods and activities. The conferees also expect close cooperation among OPM, the Executive Director of the Thrift Investment Board, and the DCI to ensure both uniform administration of federal retirement systems and the protection of intelligence sources, method and activities, particularly as the conference agreement provides for OPM and Executive Director, Thrift Investment Board inspection and audit of CIA-related disbursements from the Civil Service Retirement and Disability Fund and the Thrift Savings Plan.

The DCI must submit all retirement regulations he issues to the intelligence committees of the Congress before the regulations take effect.

Section-by-Section Explanation

Title V of the conference agreement addresses Central Intelligence Agency retirement and related matters. Title V consists of sections 501 through 506 amending the Central Intelligence Agency Retirement Act of 1964 for Certain Employees and title 5 of the United States Code and section 507 making related changes.

Section 501: References

Section 501 of the conference agreement amends the CIA Retirement Act of 1964.

Section 501(1) amends section 201(c) of the CIA Retirement Act to make clear that the provisions of section 201(c), which provide for the finality and unreviewability of DCI administration of the CIA Retirement Act, do not override the provision of section 305(d) of

the CIA Retirement Act (added by section 506 of the conference agreement) which permits CIA regular FERS employees to appeal certain adverse retirement determinations made by the DCI to the Merit Systems Protection Board and the federal courts in accordance with section 8461(e) of title 5 (as added by section 101 of the conference agreement).

Section 501(2) replaces the phrase "this Act" each place it appears in Title II of the CIA Retirement Act with the phrase "this title" (except in two specified sections), which is necessitated by the addition of a new Title III to the CIA Retirement Act by section 506 of the conference agreement.

Section 501(3) inserts the phrase "under this title" in Title II of the CIA Retirement Act after the phrase "payable from the fund" (meaning the CIA Retirement and Disability Fund) each place it appears in the title, which is necessitated by the addition of a new Title III to the CIA Retirement Act by section 506 of the conference agreement.

Section 502: Contributions to the CIA retirement and disability system

Section 502 of the conference agreement amends section 211 of the CIA Retirement Act of 1964.

Section 502(1) amends section 211 of the CIA Retirement Act to provide for an exception from the CIARDS contribution requirement of seven percent of basic salary contained in section 211(a) for participants described in new section 211(d) of the CIA Retirement Act as added by section 502(2) of the conference agreement.

Section 502(2) adds to section 211 of the CIA Retirement Act a new subsection (d) providing for contributions to the CIA Retirement and Disability Fund by CIARDS participants subject to title II of the CIA Retirement Act before January 1, 1984, whose service is employment for purposes of Title II of the Social Security Act and the social security tax provisions of the Internal Revenue Code but whose service is not creditable service under the new Federal Employee Retirement System. Such individuals would be CIARDS annuitants (who were participants before January 1, 1984) who are recalled to service after a one year break in service, political appointees, or individuals described in section 301(c)(1) of the CIA Retirement Act. The conferees intend that this provision not apply to any individuals other than individuals who fall within one of these categories. The contribution due to the CIA Retirement and Disability Fund from such an individual is equal to seven percent of basic pay, less the amount of social security taxes deducted and withheld from basic pay.

Section 503: Offset of annuity by amount of social security benefits

Section 503 of the conference agreement amends section 221 of the CIA Retirement Act of 1964 by adding a new section 221(p). Section 221(p) provides that the annuity payable under CIARDS to an individual described in section 301(c)(1) of the CIA Retirement Act (as added by section 506 of the conference agreement) shall be offset by the amount of the individual's Social Security benefits, in the manner provided by section 8349 of title 5, United States Code (as added by section 201(b) of the conference agreement). An indi-

vidual described in section 301(c)(1) of the CIA Retirement Act is one who separates, or has separated, from federal service after having been a CIA employee subject to CIARDS and having completed at least 5 years of civilian service creditable under CIARDS. The social security offset under subsection 221(p) does not apply to the annuity of an individual described in section 301(c)(1) who has elected to participate in the new FERS.

Section 504: Thrift Savings Fund participation by participants in the CIARDS

Section 504 of the conference agreement adds a new section 293 to the CIA Retirement Act of 1964. Section 293 permits CIARDS participants to remain in CIARDS and to elect to participate in the Thrift Savings Plan on the same basis as CSRS participants may remain in the CSRS and elect to participate in the Thrift Savings Plan under section 8351 of title 5, United States Code (as added by the conference agreement). Sections 8461 (k) and (m) of title 5, United States Code (as added by the conference agreement) apply with respect to contributions to the Thrift Savings Plan, and resultant earnings, by CIA employees who have elected, while remaining in the CIARDS or the CSRS, to participate in the Thrift Savings Plan. This ensures that the DCI will handle all administration with respect to CIARDS and CSRS participants who have elected to participate in the Thrift Savings Plan.

Section 505: Alternative forms of annuities

Section 505 of the conference agreement add a new section 294 to the CIA Retirement Act of 1964 to authorize the DCI to provide by regulation for alternative forms of annuities for CIARDS participants to elect upon retirement. To the maximum extent practicable, the regulations and the alternative forms of annuities must beet the requirements prescribed in section 8343a of title 5, United States Code (as added by the conference agreement). The DCI must submit the regulations to the intelligence committees of the Congress before they take effect.

Section 506: Participation in the Federal Employees' Retirement System

Section 506 of the conference agreement enacts a new Title III of the CIA Retirement Act of 1964 for Certain Employees, consisting of sections 301–307.

Section 301 of the CIA Retirement Act provides for application to certain CIA employees of the Federal Employee Retirement System established under chapter 84 of title 5, United States Code (as added by section 101 of the conference agreement).

Section 301(a) provides that the FERS applies to all Agency personnel any of whose service after December 31, 1983 is employment for purposes of Title II of the Social Security Act and the social security tax provisions of the Internal Revenue Code, except as provided in subsections 301 (b) and (c).

Section 301(b) provides that CIARDS participants who were CIARDS participants on or before December 31, 1983, and who have not had a one year break in service then, are not subject to

the FERS, without regard to whether they are subject to Title II of the Social Security Act.

Section 301(c) provides that the FERS does not apply to an individual who separates, or has separated, from federal service after having been a CIA employee subject to CIARDS and having completed at least 5 years of civilian service creditable under CIARDS, unless the individual elects to become subject to the FERS.

Section 301(d) provides that the provisions of chapter 84 of title 5 (as added by section 101 of the conference agreement), which establishes the FERS, apply to CIA employees covered by the FERS, subject to any exceptions and special rules provided in Title III of the CIA Retirement Act with respect to such CIA employees.

Section 302 of the CIA Retirement Act provides special rules for CIA FERS section 203 criteria employees.

Section 302(a) provides that CIA employees subject to the FERS who are designated by the DCI under the criteria prescribed in section 203 of the CIA Retirement Act shall be treated for purposes of their retirement benefits and obligations under the FERS as if they were law enforcement officers as defined in section 8401(17) of title 5, United States Code (as added by section 101 of the conference agreement). The conferees emphasize that CIA personnel are not law enforcement officers, and indeed, are prohibited by section 102(d)(3) of the National Security Act from exercising law enforcement powers (except for CIA Security Protection Service personnel who have law enforcement powers under section 15 of the CIA Act of 1949 within CIA installations). The CIA FERS section 203 criteria employees are merely to be treated as if they were law enforcement officers for purposes of determining their FERS retirement benefits and obligations. The criteria of section 203 of the CIA Retirement Act to which the section refers permit designation of CIA FERS employees for retirement treatment equivalent to law enforcement officers if the CIA employees' duties are "(i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment."

Section 302(b) provides that the voluntary retirement provisions applicable to CIARDS participants under section 233 of the CIA Retirement Act also apply to CIA FERS section 203 criteria employees and that the mandatory retirement provisions applicable to CIARDS participants under section 235 of the CIA Retirement Act also apply to CIA FERS section 203 criteria employees, except that the applicable retirement benefits are those specified for such special category employees under the FERS in chapter 84 of title 5, United States Code. Section 233 of the CIA Retirement Act permits voluntary retirement by an employee who is at least 50 years of age and has rendered 20 years of service provided the employee has not less than ten years of Agency service, of which at least five years shall have been service after designation, or shall have been service prior to designation consisting of duties meeting the criteria prescribed in section 203 of the CIA Retirement Act. Section 235 of the CIA Retirement Act permits mandatory retirement of a designated employee who has completed at least 25 years of service, or who has completed 20 years of service and is at least 50 years of age, provided such employee has not less than ten years of Agency

service, of which at least five years shall have been service after designation, or shall have been service prior to designation consisting of duties meeting the criteria prescribed in section 203 of the CIA Retirement Act. Section 235 also provides for automatic separation from the Agency at age 60 of a section 203-designated Agency employee receiving compensation at less than the GS–18 level and for automatic separation of such an employee at age 65 if such employee is receiving compensation at the GS–18 level or above, subject to extensions by up to a total of five years by the DCI when it is in the public interest. A section 203-designated Agency employee who is automatically separated at age 60 or 65 receives retirement benefits under the applicable retirement system if the employee has completed five years of Agency service.

Section 302(c) provides that the recall provisions applicable to CIARDS participants under section 271 of the CIA Retirement Act also apply to CIA FERS section 203 criteria employees, except that a CIA FERS section 203 criteria employee make contributions during recall service as provided in section 8422 of title 5, United States Code (as added by section 101 of the conference agreement). When a CIA FERS section 203 criteria employee recalled to service subsequently reverts to a retired status, his FERS annuity is redetermined.

Section 303 provides a special rule for use in determining the FERS annuity of a retiring CIA employee who is not a FERS section 203 criteria employee and who has served outside the United States during his Agency service. The portion of such annuity relating to service abroad performed by such employee after the effective date of the Federal Employees' Retirement System Act of 1986 is based on the higher accrual rate set forth in section 8415(d) of title 5, United States Code (as added by section 101 of the conference agreement), while the portion of the annuity of such employee relating to other service is based on the normal FERS accrual rate applicable to that employee's other service. The conferees provided the accrual rate increase for periods of service abroad for regular CIA FERS employees because such employees, during their service abroad, perform work substantially similar to that of FERS section 203 criterial employees, and should thus enjoy equivalent pension accrual rights during that period as a matter of equity.

Section 304 provides special rules relating to certain former spouses of certain CIA personnel. The conferees' intention is to perserve the existing regime of benefits for former spouses of CIA personnel, subject to necessary technical changes. The term "former spouse" as defined in the CIA Retirement Act (section 204(b)(4)) incorporates the requirement, applicable throughout the new Title III of the CIA Retirement Act that, to be considered a "former spouse," the former wife or husband of a CIA employee must have been married to the CIA employee for not less than 10 years of Agency service, at least 5 years of which were spent outside the United States by both the employee and the spouse (the "10/5 requirement"). As a result of section 304, CIA FERS employees' former spouses, who meet the 10/5 requirement, receive former spouses benefits analogous to those received by CIA CIARDS and CSRS employees' former spouses who met the 10/5 requirement. Throughout the discussion below of this section, unless the context

indicates otherwise, the term "former spouse" when used in reference to a CIA employee's former spouse, means only a former wife or husband who satisfies the 10/5 requirement.

Section 304(a) provides that the former spouse provisions in chapter 84 of title 5, United States Code (as added by section 101 of the conference agreement) do not apply to a CIA FERS employee who has a former spouse meeting the 10/5 requirement. Instead, the special rules provided in section 304 apply to such an employee and former spouse. For a CIA FERS employee whose former spouse did not meet the 10/5 requirement, the normal former spouses provisions of chapter 84 of title 5 (as added by section 101 of the conference agreement) would apply.

Section 304(b) provides that the provision in section 221(b)(1)(C) of the CIA Retirement Act for a joint employee/former spouse waiver of a survivor annuity by spousal agreement applies with respect to the survivor annuity for a CIA FERS employee's former spouse under section 304(c)(2).

Section 304(c) provides that certain specified provisions of the CIA Retirement Act of 1964 relating to CIA CIARDS employees apply equally to CIA FERS employees with respect to former spouses. The specified provisions made applicable deal with computation of annuities for former spouses, election of survivor benefits for former spouses, sharing of discontinued service (i.e., lump sum) benefits with former spouses, and the effect of payments under spousal agreements or court orders.

Section 304(d) provides technical special rules with respect to computation of annuities for CIA FERS employees' spouses in accordance with section 222(a) of the CIA Retirement Act as made applicable by subsection 304(c). The special rules are necessary to take account of the recall and reemployment situations of CIA FERS employees and to take account that CIA FERS employees' contributions belong in the Civil Service Retirement and Disability Fund rather than the CIA Retirement and Disability fund to which CIA CIARDS participants contribute.

Section 304(e) provides special rules relating to the survivor annuities of CIA FERS employees' former spouses under subsections (b) and (c) of section 222 of the CIA Retirement Act as made applicable by section 304(c). The special rules adjust the application of the CIA Retirement Act provisions made applicable to CIA FERS former spouses provisions in light of the former spouses provisions of chapter 84 of title 5, United States Code (as added by section 101 of the conference agreement) with respect to percentage of employee annuity used in calculating former spouse survivor benefits, the employee annuity base used in such calculation, survivor annuity election, aggregation of multiple survivor annuities, and employee contributions to fund elected survivor annuities.

Section 304(f) provides for computation of the reduction of a CIA FERS employee's annuity to provide survivor annuities in the manner provided by section 8419(a) of title 5, United States Code (as added by section 101 of the conference agreement).

Section 304(g) provides that the entitlement of a retired CIA FERS employee's former spouse to a portion of the employee's annuity extends to any annuity supplement the employee receives

under section 8421 of title 5, United States Code (as added by section 101 of the conference agreement).

Section 305 provides that section 201(c) of the CIA Retirement Act, which provides for the finality and unreviewability of DCI administration of the CIA Retirement Act, applies to administration of FERS by the CIA with respect to CIA employees, except that regular CIA FERS employees may appeal certain adverse retirement decisions made by the DCI to the Merit Systems Protection Board and the federal courts as provided in section 8461(e) of title 5, United States Code (as added by section 101 of the conference agreement). Subsection 8347(n) of title 5, United States Code (as amended by the conference agreement) contains a provision similar with respect to finality and unreviewability of DCI administration of the CSRS with respect to CIA employees and similar with respect to appeals of certain DCI decisions by CIA CSRS employees.

Section 306 authorizes the DCI to prescribe in regulations (in consultation with the Director, OPM and the Executive Director of the Thrift Investment Board) appropriate procedures to carry out Title III of the CIA Retirement Act. The DCI must submit the regulations to the intelligence committees of the Congress before the regulations takes effect.

Section 307 authorizes the DCI to provide by regulation for the transition from CIARDS to FERS for CIARDS participants electing to participate in the FERS. Section 307 gives CIA CIARDS employees the same opportunity to elect to participate in the FERS as CIA CSRS employees enjoy under title III of the Federal Employee's Retirement System Act of 1986. The DCI must submit the regulations implementing section 307 to the intelligence committees of the Congress before the regulations take effect.

Section 507: Special retirement accrual for other intelligence personnel

Section 507 extends, to a limited number of civilian employees of the National Security Agency and the Defense Intelligence Agency covered by the CSRS and the FERS, the special retirement accrual benefit provided to CIA regular FERS employee for periods of overseas service by section 303 of the CIA Retirement Act (as added by section 506 of the conference agreement). The conferees concluded that NAS and DIA civilian employees within the groups covered by section 9(b)(1)(B) of the NSA Act of 1959 and section 1605(a) of Title 10, United States Code merit treatment equivalent to that afforded CIA regular FERS employees for periods of service abroad because of the nature of their intelligence duties.

ADMINISTRATION OF CSRS AND FERS FOR EMPLOYEES OF THE CIA

Section 206(i) of the conference agreement amends section 8347 of title 5, United States Code, to add a new subsection 8347(n) to provide for CIA administration of the Civil Service Retirement System as it applies to CIA employees. Section 8347(n) provides for CIA administration of the CSRS as it applies to CIA employees in the same way as section 8461 of title 5, United States Code (as amended by the conference agreement) provides for CIA administration of the FERS as it applies to CIA employees. The conferees

concluded that CIA administration with respect to CIA employees of all retirement systems applicable to CIA employees forms an essential part of efforts to improve the protection afforded to intelligence sources, methods and activities.

These provisions (sections 8347 and 8461) provide that the Director of Central Intelligence may, consistent with the administration of CSRS and FERS by the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board and to the extent the DCI considers appropriate, administer CSRS and FERS retirement provisions as they apply to CIA personnel. In addition the DCI may, to the extent he considers appropriate, perform with respect to CIA personnel the functions and duties (including with respect to disbursements from the Civil Service Retirement Fund or the Thrift Savings Plan, but not including Thrift Savings Plan investment decisions) of the Director, OPM or the Executive Director, Thrift Investment Board under subchapter III of chapter 83 or under chapter 84, which those officers would otherwise perform. To the extent that the DCI does not exercise his authority to assume the functions and duties of OPM or the Executive Director with respect to CIA CSRS and FERS employees, OPM and the Executive Director would continue to perform such functions and duties with respect to CIA CSRS and FERS employees. Allowing the DCI to assume such functions and duties to the extent he considers appropriate will permit a phased, orderly assumption of retirement administration functions and duties by the CIA.

These provisions also provide that sections 8439(b), 8461(h)(1), and 8474(c)(4) of title 5, United States Code (as added by section 101 of the conference agreement) shall be applied with respect to information relating to CIA personnel in a manner that protect intelligence sources, methods and activities. Section 8439(b) relates to auditing of the Thrift Savings Plan by a qualified public accountant and a report to the General Accounting Office. Section 8461(h)(1) relates to OPM access to information held by other agencies. Section 8474(c)(4) relates to Executive Director, Thrift Investment Board access to information held by other agencies. Although nothing in the Federal Employees' Retirement System Act of 1986, or the amendments made by the Act, impairs or affects statutes (such as section 102(d)(3) of the National Security Act of 1947 and sections 6 and 8 of the CIA Act of 1949) and Executive Orders (such as Executive Orders 12333 governing intelligence activities and 12356 governing national security information) regarding protection of intelligence sources, methods and activities, the conferees believed it appropriate to emphasize the requirement for such protection because certain provisions of chapter 84 refer specifically and address the issue of access by one agency to information held by another agency. Security practices, including clearance requirements, normally applicable to intelligence information will apply in the administration of sections 8439(b), 8461(h)(1) and 8474(c)(4) of title 5 as they are applied with respect to CIA.

W.V. ROTH, Jr.,
TED STEVENS,
CHARLES MCC. MATHIAS, Jr.,
TOM EAGLETON,
ALBERT GORE, Jr.,
Managers on the Part of the Senate.

From the Committee on Post Office and Civil Service:

For consideration of the Senate amendments Nos. 1, 2, and 3 and modifications committed to conference:

WILLIAM D. FORD,
WILLIAM CLAY,
MARY ROSE OAKAR,
GENE TAYLOR,
JOHN T. MYERS,

As additional conferees on Senate Amendment No. 3:

From the Permanent Select Committee on Intelligence:

For consideration of title IV of the Senate amendment and modifications committed to conference:

LEE H. HAMILTON,
LOUIS STOKES,
ANTHONY C. BEILENSON,
BOB STUMP,
ANDY IRELAND,

As additional conferees on Senate Amendment No. 3:

From the Committee on Foreign Affairs:

For consideration of title V of the Senate amendment and modifications committed to conference:

DANIEL A. MICA,
PETER H. KOSTMAYER,
OLYMPIA SNOWE,

As additional conferees on Senate Amendment No. 3:

From the Committee on Ways and Means:

For consideration of provisions in section 101 of the Senate amendment establishing a new subchapter III of chapter 84—Thrift Savings Plan; establishing a new section 8475 in subchapter VII—transition provisions; of title II of the Senate amendment; and of section 305 of the Senate amendment and modifications committed to conference:

BILL ARCHER,
WM. THOMAS,
Managers on the Part of the House.

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